LEADING CASES IN THE BIBLE

DAVID WERNER AMRAM

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BY

DAVID WERNER AMRAM, M.A., LL.B.

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"If by any means we can determine the early forms of jural conceptions, they will be invaluable to us. These rudimentary ideas are to the jurist what the primary crusts of the earth are to the geologist. They contain, potentially, all the forms in which law has subsequently exhibited itself."

SIR HENRY SUMNER MAINE.

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DEDICATED

MOST AFFECTIONATELY TO MY DEAR PARENTS

WERNER D. AMRAM

ESTHER AMRAM

ON THE

FORTIETH ANNIVERSARY OF THEIR WEDDING

MAY 6, 1905

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PREFACE.

A Leading Case is one "which decides some particular point in question, and to which reference is constantly or frequently made, for the purpose of determining the law in similar questions." (Bouvier.) In the strict sense of this definition the cases in this volume cannot be called leading cases, although they have been frequently cited, not only in the Jewish lawbooks, but also in the ecclesiastical and civil courts of Christendom. Although many of them are legendary accounts and not actual records of cases decided in courts of law, I have chosen the title Leading Cases for them because they are the first records of their kind and, by reason of the fact that they are embodied in the Biblical literature, have maintained throughout the centuries a position of preëminence as authorities, not only in questions of law, but also in matters of doctrine, of faith and of history.

My views of the nature of the cases and the scope

of the decisions—where decisions are made—are, as a rule, not the views expressed in either the Jewish or non-Jewish religious or legal literature. They have been considered from the historical point of view, read, as far as possible, in the light of their own times, without regard to the interpretation which later ages have placed upon them. There has never been a uniform system of interpreting the Bible, and every possible construction has been given to these cases, according to the knowledge, the religion or the prejudice of the interpreter. I offer my guess as to their meaning with all due deference to the opinion of the many who will disagree with me, both among the orthodox and the heterodox interpreters of the Bible. I have received a few suggestions from the Hebrew commentators and from some of the modern higher critics, but the bulk of the commentaries and works on exegesis that I have examined are entirely valueless for my purpose.

Thirteen of the cases appearing in this volume were published in the "Green Bag" of Boston during the years 1900 and 1901. "The Trial of Jeremiah"

appeared in the "Biblical World" of Chicago in December, 1900. The other cases have never before been published. Those heretofore published have been revised, some of them rewritten. Repetitions will no doubt be found, although a conscientious effort has been made to eliminate them. This and other faults are left to the indulgence of the considerate reader, to whom this book is presented with the hope that he may find in its perusal a little of the pleasure that I have found in its preparation.

I gratefully acknowledge the assistance given me by my wife, who revised the manuscript, read proof and prepared the index.

DAVID WERNER AMRAM.

May 6, 1905.

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INTRODUCTION.

He who believes that the Bible was literally inspired by God, reads and examines it by the aid of canons of criticism differing from those applied to other documentary remains of antiquity. He reads the Bible in a spirit of devotion, seeks in it precept and illustration in support of his views of right and wrong and finds in it weapons of offense and defense with which to fight the battles of his religious convictions. But this theory of direct and immediate divine inspiration, although it may give the Bible a peculiar sanctity, cannot fail to render its content for the most part unintelligible. The Bible may or may not have been written in a manner different from other productions of the human understanding, but it is certain that it has value only if studied by the rational and critical method that is applied to all other historical documents and records.

The Bible is a collection of legends, chronicles, myths, historical narratives, laws, moral precepts,

orations, rhapsodies and proverbs, written at different times during a period of probably over a thousand years. Much of this material existed as folklore and oral tradition long before it was written down; some of it probably first appeared in writing very nearly in the form in which it has been handed down to us. In these records many stages of civilization have left memorials of their painful progress in religion, in morals and in law. The striving of the human mind in its conquest of the physical world, the growth of the sense of right from its crude origin to its sublime perfection in the prophetic literature, the progress of society as revealed in the customs and laws of many generations of nomads, farmers, citizens, ecclesiastics and kings, the history of a remarkable people of Semitic origin, small in number, but of extraordinary ability to master its environment and survive under conditions which clearly pointed to annihilation—all this may be read in this remarkable collection of documents, the Bible.

Generations have come and gone since the biblical code was completed. Churches, religions, sects and

individuals have interpreted and misinterpreted it, and have read into it every possible and impossible conception of the human mind in their effort to find sanction and authority in its dicta. It has rarely been subjected to sane exegesis. *A priori* theorizing, hysterical raving and cruel fanaticism have made the Bible the play ground of fancy, the battle ground of speculation and the burial ground of freedom of thought. In modern times, much superstitious reverence for the ancient words still prevails. Preachers still use Bible texts torn from their context for parenetic purposes; revivalists still make capital of miracles that the human mind has long ago rejected as impossible and untrue; and all sorts of men holding briefs for all sorts of theories, dogmas, self-delusions, hypocrisies, prejudices and falsehoods still point with pride to the Bible as the basis of their authority and the source of their illustration. Alas for the good, gray, old book, its history is the saddest chapter of the history of mankind.

But the nineteenth century witnessed the emancipation of the intellect of a great and influential pro-

portion of civilized men from the shackles of superstition. The work of the martyrs of the middle ages, vitalized by the spirit of the Renaissance, has at last born fruit, and those principles of liberty which find formal expression in the First Amendment of the Constitution of the United States have grown ever stronger and more effective among the nations of the earth. Even those who still have a predilection for deductive reasoning are no longer fanatical in their insistence upon the truth of the conclusions which they reach. The spirit of free, scientific inquiry which marked the nineteenth century has affected, often unconsciously, even those who have approached the Bible with preconceived notions of its teachings. It is happily true that the good old days of theological domination have passed away never to return; and though many a revival of religious hysteria, Christian Science, ecclesiastical dominion and popular folly may give apparent reason for loss of faith in the permanent uplifting of the human race to a higher plane of sane and truthful thought and utterance, we may confidently rely on the conclusions based upon the

evidence furnished by history that progress goes on in spite of temporary relapses.

The historical, ethical and religious aspects of the Bible have been well considered by many scholars of note and by a host of students of humbler capacity and more modest achievement, but the legal aspects of the Bible records have been practically ignored. The Bible has been studied almost exclusively by theologians and rarely by lawyers. The fact that lawyers, or men with legal training, have not found the Bible an object worthy of their serious attention has contributed not a little to its misinterpretation and to the misconceptions that have arisen out of it. The long continued misinterpretation of the biblical records in the interest of theological dogma, falsely called religion, or of race prejudice falsely based on the science of comparative sociology, has helped to bring the Bible and biblical study into disrepute. Men of modern times who love freedom in thought and in expression—and among this class lawyers are by training and professional practice easily among the first—have revolted from the influence of dog-

matic religion and its superstructures of vanity and vexation of the spirit. With this revolt has come a concomitant loss of all interest in the Bible for its own sake, as a valuable record of history, custom and law. Thus the Bible has suffered for the sins of the churches and of the official expounders of the word of God. The pages of history are overburdened with testimony showing how every villainy practiced by officialdom and hierarchy, every intolerant edict of king or prelate, every special plea for vested rights founded on class privilege, every oppression of the many by the few, has been ably defended by the official mouthpiece of many a church. And even in our own day and time we see so-called ministers of religion encouraging and supporting similar wickedness and like their forerunners appealing to the Bible as though it really gave support to their wretched special pleading. The result of all this has been that, to the opponents of the church, the Bible has become an object of contempt, but to its adherents it has remained an object of veneration. The former class do not read it at all; the latter read it in the light of

official exposition, which is quite as bad, if not worse than not reading it at all.

Examined from the legal point of view and read with no other immediate purpose than to understand the nature of the legal institutions that are described in it and are illustrated by its cases, legends and chronicles, the Bible becomes an object of renewed interest. For the biblical records are the deposits left by the receding waters of time, by the examination of which the laws and customs of past ages may be understood. In these records may be found the very beginnings of an institution, its gradual unfolding and its full development. These data are not set forth separately and clearly, but, like the residuum on the seashore, scattered without order, partly buried in foreign matter, ofttimes entirely concealed from the eye of the superficial examiner and exhumed only by the skill and patience of the delving student.

In reading these records, care must be taken to examine them, as far as possible, by the light of their own days and to refrain from reading into them the ideas and thoughts of a later age. The common

method of the lawyer in presenting a brief to the Court, where, for the purpose of bringing out a principle or drawing an analogy, he cites cases of early and later dates, statutes and judicial dicta cunningly mingled without regard for their chronological order, may serve a practical purpose, but it is fatal to a true knowledge of the history and principles of jurisprudence. It has been well said that "the warning can never be too often repeated that the grand source of mistake in questions of jurisprudence is the impression that those reasons which actuate us at the present moment in the maintenance of an existing institution have necessarily anything in common with the sentiment in which the institution originated."

In the biblical records the mere contiguity of the material is absolutely no indication of its true chronological order. There can be little doubt, for example, that the law concerning the Sabbath as recorded in Exodus XXXIV, 21, is hundreds of years older than the law recorded in Exodus XXXI, 12–17. The common biblical chronologies, as taught in Sunday schools and as set forth in current religious literature, are

absolutely worthless. They assume the literal exactness of the words of the Bible, of the present order of the biblical books and of the events recorded in them. Intelligent criticism has proven that neither the words nor the order of the books nor their content are correct beyond doubt, and that, in part at least, their historical accuracy is exceptionable, above all in matters of chronology. The Book of Judges contains records which in many instances are older by centuries than many of the events recorded in the earlier books. The traditions in the Book of Genesis have at least two, if not three, original sources; part of them are of remote antiquity and part of a much later date. Much of the material in the Bible is legend and folklore, stories told by herdsmen of the desert and simple farmers of ancient Canaan, and upon this basis attempts have been made these many centuries to construct a history. The discretion necessary for the proper writing of history can never be realized by the orthodox theologian who accepts as literally true the legend of Jonah and the whale or of Eve and the serpent, nor by the "higher"

critic, armed with knowledge of philology, but ignorant of economics and law.

But although a story may be mere fable, poetry or mythology, it may, nevertheless, be deeply interesting to the lawyer and sociologist, for all men who speak and write are unconsciously testifying to the influences by which they are surrounded. The Nomad uses phrases in his stories which reflect his views of custom and law and picture the institutions by which he is surrounded and in which he moves and has his being; his testimony thus recorded is of the highest value because it is unconscious testimony. When the primitive orientals entertained each other with the story of the events of the Garden of Eden, it is quite certain that their purpose was not to explain the method of investigation pursued by the Deity as recorded in that story, and yet this legend reflects the notions of justice, some of the methods of procedure, the status of women and of slaves and other matters relating to a very early stage in the history of the Hebrew Nomad. Although the Court of Heaven mentioned in the Book of Job is mythical, its

procedure is not; for it was the procedure familiar to the writer of the book and by him projected into the High Court of Heaven.

Nearly all of the legends recorded in the Bible are etiological in their nature, but their legal value is not only not impaired thereby but rather increased. The great Bible critics of modern times have passed by the legal aspect of these records for quite obvious reasons. Nearly all of the leading biblical scholars are theologians, although very liberal ones. In fact when reading their books one wonders how they can remain theologians in good standing in any church that has any notions on the subject of biblical criticism. In Germany, for instance, Professor Noesgen, of Rostock, is said to be distinguished "as the only German University theologian who still believes in the literal inspiration of the scriptures." The most highly educated churchmen of the German, English and American churches repudiate doctrines of their faith which have always been considered of fundamental importance. In spite of all this, liberal though they are, they are not lawyers and, therefore, have

never been especially interested in or attracted to the legal aspect of the subject matter of their studies. The result of this has been a one-sided development of biblical knowledge, based largely on mere philological theories, and the substitution of a pseudo-scientific dogmatism for the dogmatism of orthodox interpretation.

The true ethical meaning of the biblical stories can never be grasped without a thorough foreknowledge of the real facts related so far as they can be deduced or reconstructed, and without an accurate conception of the motives that govern the action of the personages of whom these stories are told. It has become a matter of commonplace knowledge among educated men that there is no such thing as absolute morality. The historical method of investigation applied in the realm of ethics has shown that morality, like all other elements of civilization, has had a growth and that its standard varied from age to age until it reached its full fruition in the system of ethics to be found in the Bible of the Hebrews, in the analects of Confucius and in the teachings of Buddha.

These three systems of ethics were perfected at some time between the eighth and the fifth centuries before the Christian era. Since then the problem has been one of mere application of these old principles to new conditions, and practically nothing has been added to our conception of right and wrong. A knowledge of the biblical legends that antedate the latest period in the development of the conception of right and wrong is important as an illustration of the growth of this conception. Illustrations may be found among the early customs of European nations which show that even in comparatively late times the taking of human life was merely an offense that might be condoned upon payment of a certain amount of money or a certain number of cattle. It would be unjust to condemn as immoral the age in which so low a value is placed on human life. The point to be remembered is that among the people who held this comparatively low view it was the highest view, and, therefore, what from our point of view is immoral was from their point of view quite moral and proper.

These Leading Cases are merely raw material which may be of use to the student of the history of civilization and the philosophy of law. They have been arranged in the order of their appearance in the Bible. Five of them involve the legal status of women and in them may be traced the growth of the law on this subject from the exercise of *patria potestas* by Jephthah and Laban, through an intermediate stage, illustrated in the case of Ruth, showing the right of women to transmit title to property, to the important case of Zelophehad's daughters, in which the legal status of women is vastly improved, they appear as plaintiffs in legal proceedings, and, through the precedent established, modify the law of intestate succession. In the case of Jacob and Laban there is also some indication of a state of society, the matriarchate, in which power and property are transmitted through the females instead of the males.

The development of courts of law and their procedure is illustrated by many of these cases. In the case of Adam and Eve we see the patriarch exer-

cising his power and authority in conducting a judicial investigation. His method of examination is capricious, and in inflicting punishment he does not hesitate to modify the law which he himself has laid down, for in the early patriarchal society, as in ancient Rome, the law of the family was the will of the patriarch. He was responsible to no man for his actions and was restrained only by that innate reverence for precedent which has, at all times, but most especially in primitive ages, characterized the human mind. The existence of a family court for the purpose of settling disputes between clansmen is hinted at in the case of Jacob and Laban. The Court of the Elders, the ancient Hebrew Curia, based originally on the consanguinity of its members and later on their territorial propinquity, exercises jurisdiction in the cases of the Son of Shelomith, of Jeremiah and of Boaz and witnesses the conveyance of the Cave of Machpelah to Abraham. In the case of Boaz it is likewise merely a court called together to attest the validity of a legal transaction. In these cases the Court of the Elders is not seen in its

primitive form; there are indications that its ancient jurisdiction was modified by the interference of royalty. In the case of the Son of Shelomith, Moses represents quasi royal power; he sits with the court and indeed is the most important figure in it. In the trial of Jeremiah, the Elders have been relegated to the rear and the royal princes occupy the foreground. In the case of Naboth, the Elders are the mere tools by means of which the forms of law are complied with, to enable royal aggression to subvert the law of the land. It is the story of the Senate of Rome in the days of the Caesars; an institution of great antiquity is preserved, but its real authority has departed and it is dominated by the power of the crown. The origin of this royal power may be seen in the case of Adonijah, Abiathar and Joab, where the judge is the King himself, exercising sway in the most arbitrary manner, not even respecting the ancient right of sanctuary. This royal power existed concurrently with the ancient jurisdiction of the Elders, except that in the immediate vicinity of the throne, in the city containing the royal resi-

dence, the jurisdiction of the Elders was naturally dwarfed into insignificance by the great power concentrated in the hands of the monarch. No patriarch, however liberal, would have dared to go as far as the King in the exercise of his authority. But between the patriarch and the King lies the history of centuries which changed little family organizations and tribes into constituent bodies of a great nation, and with the newer and broader political basis came progressive departure from tradition, weakened respect for the influence of the law and the exercise of autocratic power resulting in all sorts of usurpations. The Courts of the Elders existing contemporaneously with the kings were hardly more than mere anachronisms, survivals of a former vigorous institution, now existing with merely a shadow of its former power. But with the decline of the royal power and the destruction of the Jewish state in the fifth century before the Christian era, the old authority of the courts of the Elders, long in abeyance, revived, and in the period after the return from the Babylonian captivity this ancient institution was re-

established and became the archetype of the two great courts of the Jews, the "Men of the Great Synagogue" and the "Sanhedrin."

Similarly the growth of other laws and legal institutions may thus be traced from stage to stage, preparing the way for that magnificent code of the law in which high principles of justice and refined theories of law and procedure finally culminated. This is the code of the Mishnah as expanded and interpreted in the Gemarah, both of which together constitute the Talmud.

THE CASE OF ADAM AND EVE.

Genesis II, 4–III, 24.

The legend of Adam and Eve is one of a class of legends well known to the student of folklore, in which men in the early stages of civilization, under the influence of primitive ideas, told the stories which attempt to account for the beginnings of things.

The story of Adam and Eve is obviously not historical; but, despite its legendary character, it contains elements interesting to the sociologist and the lawyer. Its suggestions of legal procedure and substantive law reflect the views of the people among whom the legend was current, and by whom it was finally reduced to writing. There are two accounts of the legend in the Book of Genesis. In the first account (I, 26–29) the man and the woman were created at the same time and there is no reference to the Garden of Eden. The second account is found in the second and third chapters, and it is this record that is now made the subject of inquiry.

Taking the story as though it were a record of actual facts, an examination gives us the following history of the case.

God made man of the dust of the ground and breathed into his nostrils the breath of life. He then planted a garden in Eden and placed the man in charge of it "to dress it and to keep it." Among the many trees of this garden, fair in appearance and good for food, there was the tree "of the knowledge of good and evil," concerning which God laid the following command upon the man, namely, "Of every tree of the garden thou mayest freely eat, but of the tree of the knowledge of good and evil, thou shalt not eat of it; for in the day that thou eatest thereof thou shalt surely die." Thereafter God created a woman and gave her to the man to be his wife. To the woman came a serpent and tempted her to eat of the forbidden tree. To this end the serpent said to the woman, "Hath God indeed said, Ye shall not eat of every tree of the garden?" And the woman said unto the serpent, "We may eat of the fruit of the trees of the garden; but of the fruit

of the tree which is in the midst of the garden, God hath said, Ye shall not eat of it, neither shall ye touch it, lest ye die." The serpent said unto the woman, "Ye will surely not die; for God doth know, that, on the day ye eat thereof, your eyes will be opened, and ye will be as gods, knowing good and evil." "And when the woman saw that the tree was good for food, and that it was pleasant to the eyes, and a tree desirable to look upon, she took of its fruit, and did eat, and gave also unto her husband with her, and he did eat. And the eyes of them both were opened, and they knew that they were naked; and they sewed fig-leaves together, and made themselves aprons. And they heard the sound of the Lord God walking in the garden in the cool of the day; and the man and his wife hid themselves from the presence of the Lord God amongst the trees of the garden."

Thus far the history of the case as recorded, before the commencement of the investigation. Although the command of God not to eat of the tree of the knowledge of good and evil had been given to Adam

before the creation of Eve, Eve and the serpent, in discussing this command, speak of it as though it had been directed to both Adam and Eve. God had said to Adam, "*Thou* shalt not eat of it," but the serpent said to the woman, "*Ye* shall not eat," and the woman, likewise assuming that the command was addressed to her as well as to Adam, quotes the command, "Ye shall not eat of it, neither shall ye touch it, lest ye die," although there is nothing in the original command concerning touching the tree. This statement indicates the introduction of the personal equation into the testimony of witnesses. It may have been a mere unintentional exaggeration, or it may have been the result of the practice which actually grew out of the original commandment. It can easily be conceived that if a person is directed not to eat of the fruit of a certain tree on pain of death, that he would, for his own protection, establish the practice of not even touching the tree, lest he be thereby led into temptation to commit the crime. It is a case which illustrates the Rabbinical maxim, "Make a fence about the law," and finds its

justification in the inherent weakness of human nature.

The record then proceeds to give an account of the trial, conviction and sentence of the offenders, "And the Lord God called unto the man and said unto him, Where art thou? And he said, I heard thy sound in the garden and I was afraid because I was naked, and I hid myself. And he said, Who told thee that thou wast naked? Hast thou eaten of the tree whereof I commanded thee that thou shouldest not eat? And the man said, The woman, whom thou gavest to be with me, she gave me of the tree, and I did eat. And the Lord God said unto the woman, What is this that thou hast done? And the woman said, The serpent beguiled me and I did eat." Thereupon God, without making any inquiry of the serpent and without hearing anything that it might have said in its defense, punished it by decreeing, "Because thou hast done this, thou art cursed above all cattle and above every beast of the field; upon thy belly shalt thou go, and dust shalt thou eat all the days of thy life; and I will put enmity between

thee and the woman, and between thy seed and her seed; he shall bruise thy head and thou shalt wound his heel." Then turning to the woman he pronounced judgment against her in these words, "I will greatly multiply thy pain and thy conception; in pain thou shalt bring forth children; and thy desire shall be to thy husband and he shall rule over thee." Finally turning to the man he said, "Because thou hast hearkened unto the voice of thy wife, and hast eaten of the tree of which I commanded thee, saying, Thou shalt not eat of it; cursed is the ground for thy sake; in sorrow shalt thou eat of it all the days of thy life. Thorns also and thistles shall it bring forth to thee, and thou shalt eat the herb of the field. In the sweat of thy face shalt thou eat bread till thou return unto the ground, for out of it wast thou taken; for dust thou art, and unto dust shalt thou return."

The first question to be determined is, what crime was committed and what was the relative degree of guilt of the three offenders. Since the command not to eat of the tree had been given to Adam alone, he,

strictly speaking, was the only law-breaker. The woman, although her talk with the serpent implies that she also was bound to obey this command, was, strictly speaking, merely an accessory before the fact. The serpent was only morally responsible and, as its only fault was in inducing Eve to eat of the tree, it was legally guilty of no offense at all. If Eve had not induced Adam to do the same, no crime would have been committed; so that the serpent's action is seen to have been merely the remote cause of Adam's breach of the law.

But it must be remembered that this legend reflects a state of society and a system of jurisprudence in which such nice distinctions did not exist. God tries this case in the manner of the oriental patriarch investigating the misconduct of some member of the family or tribe, bound by no other law than that which he himself made, and restrained only by more or less vague traditions of which he himself was the sole authoritative expounder. Hence his method of procedure in the investigation of the case would be determined solely by the exigencies of the occasion.

In every age and among every people conceptions of the Deity are influenced by actual conditions of life and society. On the one hand God is thought of by the African savage as a piece of wood carved into some resemblance to an ugly mask, and on the other hand by a Matthew Arnold as "The eternal, not ourselves, which makes for righteousness." In the Bible God is frequently pictured as the judge, who, as in the legend of Adam and Eve, dispenses justice in the free-handed manner of the tribal chieftain. In the story of Job, written at a much later period and under the influence of an entirely different civilization, he is pictured as an oriental monarch surrounded by his court and the great officers of the crown, listening to the charges of a public prosecutor. In the case of Zelophehad's daughters he is described as a supreme judge to whom the record of a case is submitted for an opinion, who renders a decree and then by virtue of his legislative authority enlarges his decree into a general law. In the Talmud God is often represented as sitting to do justice in the Supreme Court of Heaven modeled upon the plan of

the great Sanhedrin of seventy-one judges, hearing the evidence, examining the witnesses and proceeding in every way in accordance with the procedure that was followed by the Sanhedrin. As these views of the Divine Judge differ at different times among the Jewish people so they vary among different peoples. Mention need only be made of the different conceptions of the Deity held by Sophocles, by Milton and by Goethe.

The oriental tribal chieftain administered justice in the manner described in the case of Adam and Eve. He reached conclusions in a swift and ready manner and meted out the punishment that he considered proper under the circumstances, often reversing his own decrees. The swiftness with which the result is reached in this case may be likened to Solomon's judgment, or to the case of Cain. God in this legend takes the place of the tribal chieftain and the persons represented by Adam, Eve and the serpent are members of his family or tribe whose conduct is under investigation by him. The manner in which this investigation is conducted is characteristic.

The principal offender, Adam, is brought before his judge and is immediately subjected to a cross-examination whereby he is compelled to criminate himself. The very question, "Hast thou eaten of the tree whereof I commanded thee that thou shouldest not eat?" was intended to elicit confession, for when Adam confronted his judge he showed obvious signs of guilt. The legend states that after Adam and Eve had transgressed, their eyes were opened and "they knew that they were naked." This is the belated wisdom of the criminal after the crime has been committed. He then sees its consequences and he fears, as in Cain's case, that every one that findeth him will slay him, for his guilt seems to him to be writ large on his forehead. This is the nakedness that he seeks to cover, and in attempting it he, by his very manner, bears testimony to his guilt. "He covered, but his robe uncovered more."

Adam admitted his guilt, but pleaded subtly and boldly, "The woman, whom thou gavest to be with me, she gave me of the tree and I did eat." He thus indirectly charges God himself with being responsible

for the crime in having placed the tempter by his side in the form of a woman whom he had given him to be his wife; and it may be that this fact was considered by the judge subsequently in passing sentence, for it will be remembered that, although the punishment for Adam's transgression was to have been death, there evidently were mitigating circumstances which, in the mind of the judge, warranted a lesser punishment. In turning to the woman and interrogating her, God makes no reference to the commission of any crime by her, his question is simply an indignant, "What is this that thou hast done?" and the woman meekly responds, "The serpent beguiled me and I did eat."

In this legend the serpent, condemned unheard, has the same status as the slave in the patriarchal household; it is not *sui juris* and, therefore, has no right to be heard at all. Although legally the serpent is the least offender, it receives the greatest punishment, since its moral obliquity set in motion the series of causes which resulted in the breach of the law. The severity of its punishment, therefore,

is the result of the moral rather than the legal nature of its offense. Furthermore, if we consider the status of the slave in the patriarchal household, we can easily understand how the indignation of the tribal chieftain might pour itself out first upon the helpless slave and so incline him to lessen the punishment of the more guilty member of his household.

The offense of the serpent was a species of seduction which made it possible for Eve to become an accessory to Adam's crime, and its punishment was clearly excessive. Although it had been more subtle than any beast of the field and had been permitted to hold free intercourse with its human companions, it was now degraded below every beast of the field, condemned to crawl on its belly, eat dust and be in a state of perpetual warfare with the human species. Thus for some trivial offense the house slave of the patriarch might be degraded below the most menial slave of the field. The punishment of Eve was likewise excessive; her solicitude for her husband led her, unselfishly enough, to want him to participate in the enjoyment of her new-found pleasure. Adam was

legally and morally the real offender. The command had been laid upon him directly, and he broke it in yielding most weakly to temptation. Yet in spite of this the woman, who had been his equal, was now made his subordinate, "thy desire shall be to thy husband and he shall rule over thee." The real offender was by this decree elevated above the comparatively innocent cause of his crime. According to the ideas prevalent in ancient patriarchal society, the status of woman was comparatively low. At some periods, she was merely the purchased chattel of her husband and master, and at all times, in that state of society, power and authority were the heritage of the males. This being the actual state of affairs an attempt is made to account for it in this legend by making the subordination of the woman a punishment for crime committed by her.

In sentencing Adam, God uses a phrase which indicates that he is the real law-breaker, "Because thou . . . hast eaten of the tree of which I commanded thee saying, Thou shalt not eat of it . . .," a phrase not used in the sentence of either the woman or the serpent.

According to the original commandment the punishment for Adam's transgression was death; "for in the day that thou eatest thereof thou shalt surely die." Yet in sentencing Adam the law was not strictly applied, for instead of being condemned to death he was condemned to work for a living, and it seems that part of the wisdom of the serpent consisted in its ability to anticipate this, for when the woman told the serpent that God had said, "Ye shall not eat of it, neither shall ye touch it, lest ye die," the serpent answered her saying, "Ye shall not surely die." It may be that the influence of Eve was considered a mitigating circumstance. This sentence is the archetype of the abolition of capital punishment and the substitution of life imprisonment at hard labor.

For centuries this legend has been read as literally true, churches and religions have founded infallible doctrines upon it, it has become the basis for many of the fundamental doctrines of current theology, and yet it is merely an ancient fable told by primitive herdsmen far back at the dawn of history, interesting

to the lawyer because it reflects ideas of law and justice in an early period of the development of the Jewish race, whose institutions have profoundly affected the law and ethics of civilized society.

THE MURDER OF ABEL.

Genesis IV, 1–16.

The record of the first murder case is found in the fourth chapter of Genesis. The history of the crime, its motive, the trial and sentence are all given in a few terse phrases, clearly enough to enable us, with little effort, to reconstruct the entire incident. The facts of the case are as follows: Cain and Abel were brothers; Cain was an agriculturist and Abel a herdsman. At a certain time each of them brought an offering unto the Lord; Cain's offering consisted of the fruits of the ground and Abel's offering of the firstlings of his flock and the fat thereof. For some reason not given, the Lord accepted the offering of Abel and turned from the offering of Cain, "and Cain was very wroth and his countenance fell." His anger appears to have turned against his brother, and although the Lord warned him against yielding to it, he bided his time and "it came to pass when they were in the field that Cain rose up against Abel

his brother and slew him." This is the record of the case in all its simplicity; a crime, common enough at all times, committed under the influence of jealousy, hatred and anger.

The suggestion made in the case of Adam and Eve, that the popular imagination conceived the Deity administering justice in the manner of the patriarchal chieftain of that time applies to this case also. Here God cautioned the enraged Cain to govern his anger, lest it be translated into action, but Cain remained deaf to the voice of conscience and, taking advantage of the opportunity when he was alone with Abel in the field, killed him. The legend gives no reason why the offering of Abel was accepted and the offering of Cain refused, and assumes that there was no sufficient justification for the crime. But whatever may have been the reason for God's refusal of Cain's offering, it can hardly have any bearing on the legal aspect of the case. Comparative sociology and folklore suggest various reasons with which at present we are not concerned.

It may be pointed out in passing that cattle herd-

ing and agriculture were among the first occupations of civilized men. In the earlier and ruder state of society, hunting was the only source of livelihood. There is something suggestive in the fact that Cain, the agriculturist, killed Abel, the herdsman, for this veils a great sociological truth and translated into modern language may be taken to mean that the farmer supplanted the herdsman; just as the story of the sale of Esau's birthright suggests the fact that the herdsman had supplanted the hunter.

The only witness to the crime was the blood of the murdered Abel, which, according to the primitive notion of the time, had a voice and cried out for vengeance, and was heard by God, who appears for the purpose of conducting an investigation. He summons Cain to appear before him and, as in Adam's case, immediately subjects him to a cross-examination. The only facts that could have been known were these, that Cain and Abel were seen going out to the field together and that Cain returned without his brother, of whom no trace was found except the blood stains in the field. Suspicion nat-

urally fell upon Cain, who was brought before his judge, and addressed by one of those short incisive questions which are the delight of the Cadi and the admiration of the people, "Where is Abel thy brother?" When Adam was asked, "Hast thou eaten of the tree whereof I commanded thee that thou shouldest not eat?" he promptly confessed. When Cain was asked, "Where is Abel thy brother?" he answered, "I know not. Am I my brother's keeper?" This answer naturally strengthened the suspicion that he was the murderer. An innocent man accused of fratricide would hardly have given an answer like this, which not only breathed defiance and showed an unexpected and, therefore, highly significant heartlessness, but even alluded sarcastically to his dead brother's occupation as a keeper of sheep, whose duty it was to guard them from ravening wild animals. "Am I my brother's keeper?" asked Cain, sarcastically. "Is it my duty to look after him as he looks after his sheep?" Cain made no further attempt to defend himself, apparently relying on the fact than no witnesses could be pro-

duced against him, and that silence was his best defense. But he forgot that he left a witness crying out against him in the field, and his denial of the crime is brushed aside in the next question put to him, "What hast thou done? The voice of thy brother's blood crieth unto me from the ground."

The ancient notion of the cry of the blood may be traced to the belief that the blood contained the spirit of life and that it was a vital thing. Hence the blood became an object of awe. It was used for certain sacred and solemn purposes, such as sealing a covenant, establishing relations equivalent to kinship and the like, and the law of the three great Semitic religions, Judaism, Christianity and Mohammedanism, provides that blood shall not be eaten. (Genesis IX, 4; Acts XV, 29; Koran V, 4.)

It can hardly be said that Cain was tried for his crime, because the method of examination was the merest rudiment of what subsequently became an orderly system of procedure in judicial investigation. As his guilt was assumed from the circumstances of the case and, beyond a bare denial, he made no at-

tempt to defend himself, the sentence of the Court followed immediately. His punishment was not death, but exile.

The first statute on the subject of homicide is recorded in Genesis IX, 6, "Whoso sheddeth man's blood, by man shall his blood be shed." Cain feared death, saying, "every one that findeth me will slay me"; but this had no reference to lawful punishment for his crime, but to the fact that by being exiled he was outlawed and compelled to wander away from the settled habitations of men into the surrounding wilderness, where there was neither family, nor law, nor God to protect him. The sentence was pronounced in these words, "And now art thou cursed from the earth, which hath opened her mouth to receive thy brother's blood from thy hand. When thou tillest the ground it shall not henceforth yield unto thee her strength; a fugitive and a vagabond shalt thou be in the earth." After this sentence was pronounced Cain no longer denied the crime, but impliedly confessed, saying, "My punishment is greater than I can bear. Behold, thou hast driven

me out this day from the face of the earth; and from thy face shall I be hid; and I shall be a fugitive and a vagabond in the earth; and it shall come to pass that every one that findeth me shall slay me." And the Lord said unto him, "Therefore, whosoever slayeth Cain vengeance shall be taken on him sevenfold." And the Lord set a mark upon Cain, lest any one finding him should kill him. And Cain went out from the presence of the Lord and dwelt in the land of Nod, on the east of Eden.

It is difficult, if not impossible, for us, who travel fearlessly to the ends of the earth, to understand what exile meant in those primitive days. Then every stranger was an enemy, and a stranger in a strange land lived in constant fear not only of his mortal foes, but of unfriendly demons and spirits with whose worship he was unfamiliar and whom he did not know how to placate. Banishment from the tilled soil meant not only outlawry and separation from friends and neighbors, but also removal from the protection of the Deity. A primitive notion of God localized him. God dwelt on the tilled land, and

in the wilderness round about, other powers always malignant were supreme. This primitive idea grew into the notion of a national God whose jurisdiction and power were coterminous with the national boundaries. Exile, therefore, in the early, as well as the later, period was a punishment worse than death, for it condemned a man to live without family, friends, law or God.

At a later period in the development of ancient Jewish law decrees of outlawry were modified and the convict was not subjected to punishment at the hands of every man, but was made an outlaw only so far as the kinsmen of the person injured or killed by him were concerned. The avenger of the blood, as he was called, was the kinsman who punished the crime by taking vengeance on the criminal, and even after courts had been established and a regular system of judicial procedure followed, there was a long period in which the Court had neither sheriff, nor executioner, nor keeper of the jail to punish the criminal. He was simply turned over to the avenging kinsmen, who inflicted the punishment for the crime.

When Cain said, "I shall be a fugitive and a vagabond in the earth and it shall come to pass that every one that findeth me shall slay me," he did not have in mind a kinsman who would be avenger of the blood, but he thought of himself as an outlaw in the wilderness where every man's hand would be turned against him. As it was obviously not intended that Cain should be put to death for his crime, his fears were allayed by the mark set upon him. The mark of Cain is commonly spoken of as a brand marking him as a murderer and condemned of God, and the phrase has gone into common speech as the "brand of Cain." But this mark was fixed upon him in order to show all the world that his life must be spared, and it seems from the context that this mark was put on him at his own request, in order to obviate the danger of his being killed by any one that found him. A man thus marked was personally inviolate, he belonged to the Deity. In addition to the mark Cain had the further assurance, which practically guaranteed his immunity, that "whosoever slayeth Cain vengeance shall be taken on him seven-fold."

Seven kinsmen of the murderer would be called upon to pay for the blood of Cain. An illustration of this custom is found in the case of the Gibeonites who appealed to King David to allow them to take vengeance for the blood of their kinsmen shed by King Saul, and they said, "Let seven men of his sons be delivered unto us and we will hang them up." (2 Samuel XXI, 6.)

The record of this case closes with the words, "And Cain went out from the presence of the Lord and dwelt in the land of Nod, on the east of Eden." From which it appears that the sentence of banishment was great rather because of removal from the presence of the Lord, in other words, from home and household gods, than because of the inability to find a resting place elsewhere, for Cain dwelt in the land of Nod.

THE PURCHASE OF THE CAVE OF MACHPELAH.

Genesis XXIII, 1–20.

The twenty-third chapter of Genesis contains the record of an ancient conveyance of land, possessing characteristics similar to those of the Roman and the Common Law, yet differing from them materially in form. The old forms of procedure here recorded are the groundwork upon which modern systems have been established. They speak of the days when the tribal ownership of land was still in force, when there were no written records, and when the public assembly, the town or village council of elders, was required to sanction the act of conveyance.

In those days formality was greater than in our times. Since, in the absence of records, the memory of witnesses was relied upon, there arose, in order to impress the transaction indelibly upon the minds of witnesses, the long and complicated formalities common to all ancient systems of jurisprudence.

Some of these formalities were made necessary by the religious element that entered into every transaction, notably the case with certain symbolic acts at Roman law, and with many cases in the Bible also. In the conveyance of the land to Abraham, however, the formality seems to have been simply an ordinary business transaction. There is no evidence in this record that the conveyance was reduced to writing at the time, but the writer who recorded the tradition in the book of Genesis used a formula of conveyance such as was probably used in legal documents in his time and which bears some similarity to the forms found in the Babylonian contract tablets.

Abraham, a nomadic Hebrew chieftain, had wandered into the neighborhood of Hebron, a city well known in later times in Jewish history, but at that time belonging to the Hittites, the "sons of Heth." With him were his wife Sarah, his children, his cattle and his slaves, the entire *familia* of the patriarch. "And Sarah was a hundred and seven and twenty years old; these were the years of the life of Sarah. And Sarah died in Kirjath Arba (the same is Heb-

ron), in the land of Canaan: and Abraham came to mourn for Sarah and to weep for her. And Abraham stood up from before his dead," and went down to the gate of the city where the town council of the Hittites was in session. There the elders of the Hittites, the "people of the land," in the presence of all who came and went through the forum at the city gate, transacted the public business of their community. Abraham was recognized by them as a distinguished chieftain not of their tribe, temporarily dwelling within their tribal domain, and was accorded the honor of a seat in the midst of their assembly. A favorable opportunity during the session of the council having presented itself to Abraham, he addressed them "and spoke unto the sons of Heth, saying, I am a stranger and a sojourner with you; give me a possession of a burying-place with you, that I may bury my dead out of my sight."

Since Abraham was an alien, he could not acquire property rights in land which was tribal property, held and used, it is true, in severalty by the members of the tribe, but inalienable, especially to a stranger,

except by common consent given by the tribal council. Our land laws, restricting the right of aliens to acquire real estate, are survivals of the days when the alien was an enemy, and could not be permitted to settle permanently, without the consent of the people, which consent was practically a decree of naturalization. It was to the people, therefore, and not to any individual that Abraham addressed himself.

"And the sons of Heth answered Abraham, saying unto him, *Hearken unto us,* my lord: thou art a mighty prince among us; in the choice of our sepulchres bury thy dead; none of us shall withhold from thee his sepulchre, so that thou mayest bury thy dead. And Abraham stood up, and bowed himself to the people of the land, to the sons of Heth. And he spoke to them, saying, if it be your mind that I should bury my dead out of my sight, *hearken unto me,* and entreat for me to Ephron the son of Zohar, that he may give me the cave of Machpelah, which he hath, which is in the end of his field."

Although Abraham knew that the owner of the

place he desired was there among the members of the council, he was prevented by the formalities of the occasion from addressing his request to Ephron personally. It will be noted that his first request and the answer of the council contained no intimation of his intention to purchase the place for money. This is usually attributed to the politeness of the parties concerned. But it was not mere politeness that governed the formalities of this occasion. It seems rather to have been the formal way of striking a bargain by question and answer, until the final consummation of the matter, by acceptance of the last offer. And the absence of the price in the opening phrases, the offer to give the land without price, the counter-offer insisting upon payment, and the final mentioning of the price casually, as it were, are all part of the regular formal act preliminary to the transfer of the title. The peculiar use of the phrases "hearken unto me" and "hearken unto us" (oyez) by each of the parties in making his proposition, or counter-proposition, seems to indicate that they were not used merely to attract the attention of the per-

son addressed, but were formal words necessary to the legality of the transaction, which ended by Abraham "hearkening unto Ephron," *i. e.*, accepting his offer.

Abraham, having thus indirectly called upon the prospective grantor of the property to speak, adds, "for as much money as it is worth he shall give it to me for a possession of a burying-place among you. Now Ephron was sitting among the sons of Heth." He was one of the council and immediately took up the word when Abraham had concluded. "And Ephron the Hittite answered Abraham in the hearing of the sons of Heth, of all that went in at the gate of his city (*i. e.*, of all the lawful tribesmen), saying, Nay my Lord *hearken unto me:* the field give I to thee, and the cave that is therein, I give it to thee; in the presence of the sons of my people give I it thee, bury thy dead." It is probable that nothing would have disconcerted Ephron so much as to have had Abraham accept his apparently generous offer; and indeed it is likely that had Abraham said, "I accept," it would not have been binding on Ephron, because

he had not said, "without price I give it to thee." The omission of these formal words led Abraham to understand that the land was not to be given without price, and that this important point had yet to be fixed.

After this statement of Ephron, "Abraham bowed down himself before the people of the land." Why? Out of thankfulness for the generous offer of Ephron? If so, why did he not bow to Ephron? This bow meant to indicate that he was prepared with his next counter-proposition, to be made to Ephron in the presence of the council. The bow and the courteous words addressed to the judge by the lawyer before addressing the jury is a ceremony somewhat akin to the rising and the bow of Abraham to the council. Abraham invariably rose and saluted the council before speaking. He arose to make his opening request. Then after they had given their consent to his acquisition of a burial place he again "stood up and bowed," before making his next offer, and, lastly, after Ephron had spoken he again "bowed down," before making his final proposition. "And

he spoke unto Ephron in the hearing of the people of the land, saying, But if thou wilt, I pray thee *hearken unto me;* I will give thee money for the field; take it of me, and I will bury my dead there."

Abraham no longer speaks of the cave, or the burial place that he desired, but of the whole field. He wanted a "possession for a burial place." This meant, not merely the six feet of ground required, or even the cave in which the body was entombed, but an estate of inheritance, in which the family tomb would be placed and which would be sanctified by the dead buried there, and become a permanent possession in the family. The evidence furnished by the grave of the ancestor buried in the family estate was the strongest that could be adduced to prove title, and there is strength in the theory that this legend was cherished by the Israelites as proof of the lawful acquisition by their ancestors of territorial rights in Palestine, thus justifying their subsequent incursion and acquisition of the land, by force of arms. "And Ephron answered Abraham saying unto him, my lord, *hearken unto me,* the land is

worth four hundred shekels of silver; what is that between thee and me? Only bury thy dead." Although four hundred shekels of silver was a fortune in those days, Ephron apparently speaks of it as a mere bagatelle. But Abraham understood Ephron. This was the formal hint that the price was fixed and the negotiation about to close. Hence Abraham "hearkened" unto Ephron, or, as it is translated in the Leeser Bible, "Abraham understood the meaning of Ephron." And, indeed, after Ephron had fixed the price, there was nothing more to be said.

"Abraham weighed to Ephron the silver which he had named in the hearing of the sons of Heth four hundred shekels of silver, current money with the merchant." The weighing was probably done by the public *libripens,* a functionary well known to us through the Roman law. The shekel here mentioned is not a coin, but a weight. The word "shekel" means weight. At a later time a certain weight of silver became *the* shekel, the standard weight of money, very much as a certain weight of English

gold became *the* pound. The act of weighing and handing over the silver ended the formality, and thereby the land became a possession for an inheritance unto Abraham forever.

The chronicler in the book of Genesis was a careful scrivener. He seems to take pleasure in recording the transaction with technical nicety. "And the field of Ephron which was in Machpelah, which was before Mamré, the field and the cave which was therein, and all the trees which were in the field, that were in all the borders round about, were made sure unto Abraham for a possession in the *presence* of the sons of Heth,before all that went in at the gate of his city." Very carefully does he enumerate the field, the cave, the trees, even all those in all its borders, lest any right to fell wood remain in the grantor. All these, he says, were conveyed unto Abraham before the public council of the Hittites, by whose presence the conveyance was made sure. Thereupon Abraham took possession and exercised his first act of ownership. "And after this Abraham buried Sarah his wife in the cave of the field

of Machpelah, before Mamré: the same is Hebron in the land of Canaan." It seems that this record was made long after the event, for the memory of a later generation had to be refreshed by the statement that the place known to them as Hebron had formerly been called Kirjath Arba, which was before Mamré. Both the latter names were merely vague memories of ancient days.

The record in the book of Genesis then ends with a clause like a clause of warranty. "And the field and the cave that is therein, *were made sure* unto Abraham for a possession as a burying place *by the sons of Heth.*" *In the presence of* the sons of Heth the formal transfer of Ephron's rights was made, and *by* the sons of Heth, representing the whole community, the title was made sure unto Abraham. Thus after having received a grant of the land by solemn covenant from God, the lord paramount (Gen. XV, 18, etc.), specially mentioning the land of the Hittites, Abraham fortified his title by a conveyance from the terre tenants.

THE SALE OF ESAU'S BIRTHRIGHT.

Genesis XXV, 29–34.

The simple and well-known story of the sale of Esau's birthright to Jacob contains much that is hidden from the eye of the superficial reader. As it is commonly taught in Sunday schools it becomes the vehicle for the communication of a certain moral truth and not less frequently for the communication of a certain prejudice against the race of which Jacob is the eponym.

The story contains an interesting chapter of ancient law. It likewise reflects the historic fact that the Israelites supplanted and conquered the Edomites, who were at one time their superiors in men and in territory, and of whose military prowess there are many Biblical legends. The legend of Esau and Jacob represents them as huntsmen and herdsmen. As the Bible puts it, "Esau was an expert hunter, a man of the field, and Jacob was a plain man dwelling in tents." This description well fits the nomadic

Edomites, rough skinned, with the odor of the fields and woods on their garments, and the herdsmen of Israel dwelling in tents and engaged in a peaceful occupation which required certain qualities of prudence and forethought, qualities which distinguished the Jacob of the legend from his heedless and rough brother. Esau represented the old order of things which was passing away, and Jacob represented the new order that was taking its place. The primitive nomads were hunters relying for their sustenance upon their skill with weapons of chase. In the course of their ordinary evolution they were converted from huntsmen into herdsmen, even as the latter were afterwards converted from herdsmen into agriculturists (see "Murder of Abel") and as, in our days, we see the agriculturists converted into industrialists.

The sociological meaning of the story of Jacob and Esau and the purchase of Esau's birthright by Jacob is that the herdsmen supplanted the huntsmen, and in that sense of the word Jacob is properly named "Supplanter," which is one of the meanings of the Hebrew name.

In the patriarchal family immemorial custom gave to the eldest born certain rights over the other children. There is some evidence in the biblical records of an earlier custom according to which the youngest born enjoys these rights and, indeed, this very legend of Jacob and Esau, by which Jacob, the younger, secures the birthright, is cited as evidence of the survival of ultimogeniture in the period of primogeniture. However this may be, in a patriarchal family the eldest born succeeded the father as head of the family, and by virtue of his birthright obtained a larger and better share of the patrimonial estate. Until fixed by statute there was no uniform custom governing the birthright and its incidents, and, indeed, the most contradictory evidence may be found in the Bible. The birthright was inalienable, and it could be sold; it was enjoyed by the eldest born, it was enjoyed by the youngest born and it was disposed of by the will of the father. In the present case it seems that Esau enjoyed the birthright as first born and had the power to dispose of it to another member of the family. The record of this sale

is given in a few interesting sentences. "And Jacob at one time boiled pottage, and Esau came from the field and he was faint. And Esau said to Jacob, Let me swallow down I pray thee some of yonder red pottage for I am faint; therefore was his name called Edom (the red one) and Jacob said, Sell me this day thy birthright. And Esau said, Behold I am going to die, and what profit then can the birthright be to me? And Jacob said, Swear to me this day; and he swore unto him and he sold his birthright unto Jacob. Then Jacob gave Esau bread and pottage of lentils and he did eat and drink and he rose up and went his way; thus Esau despised the birthright."

Esau, tired and faint from his hunt, threw himself into Jacob's tent and burst out with the words, "Let me swallow some of that red stuff for I am faint." Jacob, who had probably long been considering the acquisition of Esau's birthright and justifying his longing for it by contrasting his sober and prudent method of life with that of his boorish and heedless brother, took advantage of the opportunity and said

to him, "Sell me this day thy birthright." From the modern point of view it would have been fairer on Jacob's part to have fed Esau first and purchased his birthright afterwards. Jacob seems to have had no scruples about the ethical aspect of the question, nor did Esau question the propriety of Jacob's demand. It was only afterwards that he showed his bitterness against Jacob, who had secured the best of the bargain.

Esau's attitude toward his rights as first born was that of the rough man of the woods. He said, "Behold I am going to die," which, translated into modern phrase, means, I am so faint with hunger that I may die this very minute. "And what profit shall this birthright do to me." His words reflect the attitude of rude men towards the rights established by a higher order of society. It is the contempt of the barbarian for the products of civilization.

The birthright was an intangible thing that could not pass by delivery. Had this sale taken place publicly it would in all probability have been accom-

panied by some symbolical act to give it validity. Since there were no witnesses present to bind the bargain recourse was had to the solemnity of the oath. Jacob said to Esau, "Swear to me this day," and by the oath which Esau swore he sold his birthright to Jacob. The execution of this contract of sale is generally considered somewhat informal, and yet, upon examination we find all the necessary formalities except the presence of witnesses.

The inadequacy of the consideration had no bearing whatever upon the legality of the sale. The fact that even Esau, who subsequently believed himself to have been cheated, recognized the validity of the sale, is to be credited not so much to his honesty as to his fear of invoking the wrath of the higher powers by breaking his oath.

In ancient days before the world became commercial, when wealth consisted largely of cattle and the products of agriculture, buying and cheating were almost synonymous terms. It was taken for granted when men bought and sold that one or the other of them was being outwitted. The contempt with which

certain classes of society still look upon those who "are in trade" may be a survival of this feeling that trading was essentially impossible for persons with a nice sense of honor.

The consummation of the contract was the oath, an invocation of the higher powers to attest the act. The force and effect of an oath in ancient days was much greater than it is to-day, because the higher power was presumed to be present and to participate in the transaction as a third party to the contract. This is especially seen in the making of covenants which are accompanied by a sacrifice and other solemn formalities, in addition to the oath calling upon the ever-present Deity to witness.

A Jewish court of law under its "general equity powers" might readily have been able to relieve Esau, and compel Jacob to restore the rights which he had thus acquired. "If thou sell aught unto thy neighbor or buy aught of thy neighbor's hand, ye shall not overreach one the other" (Lev. XXV, 14). "Thy money shalt thou not give him upon usury nor lend him thy victuals for increase" (Id. 37).

But courts of law did not exist in the days of Jacob and Esau, and the legislation above quoted was not formulated until a much later time. Had Esau appealed to Isaac, his father, to relieve him from the obligation of his oath he would, no doubt, have been met with a prompt and just refusal, for, according to the legal notion of those times, the oath was inviolable and the contract bound by it irrevocable.

In reading these ancient stories it must always be remembered by whom and for whom they were told. This legend was told before it was written and, no doubt, was told as a joke on the stupid Esau, who is gulled by the clever Jacob of his precious birthright for a dish of lentils. To read this story as though it had been intended to justify itself ethically is to miss its point entirely.

IN THE MATTER OF ISAAC'S WILL.

Genesis XXVII, 1–XXVIII, 9.

Sir Henry Sumner Maine in his "Ancient Law" expresses the opinion that testamentary disposition of property, as known to modern jurisprudence, is a creature of Roman Law. In speaking of the blessing of Jacob and Esau by Isaac he says, "the blessing mentioned in the scriptural history of Isaac and his sons has sometimes been spoken of as a will, but it seems rather to have been a mode of naming an eldest son." Assuming that Maine's opinion is correct, it may well be asked what is the effect of "naming an eldest son?" If there are any property rights connected with the right of primogeniture, then "naming an eldest son" might be fairly construed to be a quasi-testamentary disposition of such rights.

The facts of the case as reported are in substance as follows: Isaac and Rebecca had twin sons, of whom Esau was the first-born and Jacob the younger.

Esau was a hunter, and, it appears, had gained his father's affection because of his skill in the chase; but Rebecca preferred her younger son because of his domestic habits of life.

In his old age Isaac had grown blind, and fearing the approach of death he determined to make provision for his favorite, Esau, by giving him his "blessing." In order to mark this occasion he directed Esau to go out to the chase and bring him some venison such as he loved, "that my soul may bless thee before I die." He thus meant to indicate by this last solemn and formal act, not merely his preference for his eldest son, but also the satisfaction and the pleasure that he had derived from Esau throughout his life. Rebecca, who had overheard this request and who was probably acquainted with the fact that Jacob had secured Esau's birthright by purchase, determined, by taking advantage of her husband's blindness, to secure the coveted blessing for him also. She ordered Jacob to fetch two kids of the flock, from which to make a savory dish to be carried in to Isaac "that he may eat; for the sake

that he may bless thee before his death." Jacob, although anxious to obtain the blessing, was not quite satisfied with the method proposed and ventured to express the fear that his father might curse him instead of blessing him, but his mother's solemn words, "Upon me be thy curse my son," reassured him, for by this assumption of responsibility, the curse, if uttered by the father, would fall upon her. This vicarious assumption of responsibility is connected with the ancient idea of sacrifice, according to which the sacrificial animal bore the sins of the person who offered it. Rebecca thereupon prepared the food and then used Esau's garments and the skins of the kids to disguise Jacob, in order that the father might not recognize him when he appeared with his gift.

When Jacob appeared before his father he said, "My father," and Isaac said, "Here am I. Who art thou, my son?" and Jacob said unto his father, "I am Esau, thy first-born. I have done as thou didst speak to me; arise, I pray thee, sit here, and eat of my venison that thy soul may bless me."

And Isaac said unto his son, "How is it that thou hast found it so quickly my son?"

And he said, "Because the Lord thy God brought it to me."

And Isaac said unto Jacob, "Come here, I pray thee, that I may feel thee my son, whether thou be truly my son Esau or not."

And Jacob went near unto Isaac his father and he felt him and he said, "The voice is the voice of Jacob, but the hands are the hands of Esau" and he recognized him not, because his hands were hairy as his brother Esau's hands, so he blessed him and he said, "Art thou indeed my son Esau?"

He said, "I am."

And he said, "Bring it near to me and I will eat of my son's venison that my soul may bless thee," and he brought it near to him and he did eat and he brought him wine and he drank, and Isaac his father said unto him "Come near, I pray thee, and kiss me my son," and he came near and kissed him, and he smelled the smell of his garments and blessed him and said, "See, the smell of my son is as the smell of a field which the Lord hath blessed."

Three times did Isaac indicate his suspicion that

there was something wrong and that he was being imposed upon. First, in his surprise that Esau had returned so quickly from the chase; then in his wish to feel him, and even after he had noticed that his hands were hairy like Esau's hands, he asked again, "Art thou indeed my son Esau?" It is quite clear that Jacob obtained the blessing by gross fraud in impersonating his elder brother Esau. It was clearly the intention of Isaac to give the blessing to Esau, and if he had discovered the imposition in time there can be no doubt that Jacob's fear, expressed to his mother when she suggested the deception, "I would bring upon me a curse and not a blessing," would have been realized.

Isaac was now satisfied and blessed Jacob, saying, "And may God give thee of the dew of heaven and the fatness of the earth and plenty of corn and wine. Nations shall serve thee and people bow down to thee. Be lord over thy brethren and thy mother's sons shall bow down to thee. Cursed be they that curse thee and blessed be they that bless thee."

God's blessing could be disposed of by the head of

the family, who was also the family priest and in possession of those mysteries by which the gods could be induced to act in certain ways. The priest was at all times supposed to be able to control God's blessing, and among the modern survivals of this belief is that which exists in the Catholic church to the effect that the church officially controls the doors of heaven and hell and that its blessing and its curse are entirely effective.

The first part of Isaac's blessing was a prayer to God to give Jacob a plentiful harvest of the fields. Following this donation of material wealth Isaac conveys to him leadership over other tribes and lordship within his own tribe and family. The latter was Isaac's personal gift. All of the property rights of the family were centered in its head, and by conveying the headship of the family, Isaac conveyed all of his property rights to Jacob.

Hardly had Jacob departed, when Esau came in and invited his father to partake of the venison that he had brought him, and Isaac said unto him,

"Who art thou?"

And he said, "I am thy son; thy first-born, Esau."

"And Isaac trembled greatly, exceedingly, and said, "Who was it? where is he that hath hunted venison and brought it to me and I ate of all before thou camest and blessed him? Yea, he will remain blessed."

When Esau heard the words of his father he uttered a great and exceedingly bitter cry, and said unto his father, "Bless me, also me, my father."

And he said, "Thy brother came with subtlety and took away thy blessing."

And he said, "Hath he been therefore named Jacob, because he hath supplanted me these two times? My birthright he took away, and behold, now he hath taken away my blessing," and he said, "Hast thou not reserved a blessing for me?"

And Isaac answered and said unto Esau, "Behold, I have made him thy lord, and all his brethren have I given to him for servants; and with corn and wine have I endowed him, and what can I do now for thee, my son?"

And Esau said unto his father, "Hast thou then

but one blessing, my father? Bless me, also me, my father." And Esau lifted up his voice and wept.

And Isaac his father answered and said unto him, "Behold thy dwelling shall be of the fatness of the earth and of the dew of heaven from above; and by thy sword shalt thou live and thy brother shalt thou serve; and it shall come to pass that when thou shalt have the dominion, thou canst break his yoke from off thy neck."

This remarkable dialogue between Isaac and Esau indicates how completely in primitive times the mere formal act was believed to have potency, irrespective of the intention with which it was done. In modern times intention is essential to confer validity upon an act, but in patriarchal times the intention was not at all essential. The formal act, whether it had been induced by fair means or by fraud, was binding and irrevocable! The notion that a formal act may be nullified on grounds of fraud or mistake is comparatively late in the history of jurisprudence.

It is generally supposed that after Isaac had said, "Where is he that hath hunted venison and brought

it to me and I ate of all before thou camest and blessed him," he suddenly realized that it was his younger son Jacob who had thus obtained the blessing, and that, being overcome by a burst of affection for him, he added the words: "Yea, he will be blessed," as though they were a confirmation of the blessing theretofore obtained by fraud. But it cannot be presumed that this is the true meaning, for Isaac undoubtedly intended to bless Esau, and his entire interview with Esau indicates that he was grieved at the fraud practiced upon him and at his inability to do anything to correct it. Note the helplessness of his statement to Esau, "And what can I now do for thee my son?" This phrase simply indicates that Isaac felt that the blessing conferred upon Jacob was irrevocable.

The blessing given by Isaac to his son Esau was more nearly a curse than a blessing. There was in fact only one blessing, as Esau's pitiful question presupposed, and that one blessing had been fully given to Jacob. The concluding words to Esau, "And it shall come to pass that when thou shalt have the

dominion thou canst break his yoke from off thy neck,'' is an allusion to the Edomites and the Israelites, whose political relations are thus supposed to have been outlined by their ancestor.

It seems, from this case, that the patriarch had the right to dispose of the family estate to a member of the family other than the oldest son. In the blessing of Ephraim and Manasseh (Gen. XLVIII, 20) Jacob preferred the younger to the older son of Joseph, and in blessing Joseph he gave him a portion above his brothers (Gen. XLVIII, 22), and the law in the Deuteronomic Code (Deut. XXI, 15–17) indicates generally that, until the right of the first-born was firmly established by statute, the patriarch had the power to prefer any of his children above the first-born.

The blessing, so-called, was something more than is connoted by the modern use of the word. It was a quasi-testamentary gift, and like testamentary gifts at Roman Law, it was public and irrevocable. The right of testamentary disposition of property as known in modern days was unknown among the

ancient Hebrews. The family was believed to be immortal, and family property, therefore, survived the death of the present holder and went to the lawful heir. Hence the patriarch had no right to give the family estate to strangers, although, as is said above, it seems to have been within his power at one time to divide it among his own children, preferring the younger sons to the first-born.

An interesting question might have arisen if Esau had obtained the blessing, and his right to the headship of the family had subsequently been contested by Jacob on account of his purchase of Esau's birthright, which was virtually an assignment of subsequently acquired property. Whether Esau would have been willing to recognize his sale to Jacob after he had obtained the blessing from Isaac is highly problematical, for though he had bound himself by a solemn oath to Jacob he had subsequently received the blessing from Isaac by an equally solemn act which could well have been interpreted to nullify the effect of the earlier oath, for, after all, the patriarch and head of the family was the one whose solemn and

formal act finally determined all questions of right and property in his family.

In Chapter XXVIII an entirely different account is given of the blessing of Jacob. There Isaac called Jacob and blessed him of his own accord. This account seems to be based upon an entirely different tradition from the former one. In the account in Chapter XXVII Jacob obtains the blessing by fraud with the connivance of his mother, Rebecca. Isaac is under the impression that he has blessed Esau, and when Esau discovers the fraud he vows vengeance and determines to kill his brother Jacob. Rebecca, therefore, sends Jacob away until Esau's wrath shall have been appeased. In the account in Chapter XXVIII Isaac voluntarily blesses Jacob and sends him away for the purpose of having him marry one of the daughters of the house of Laban, and nothing at all is said about Esau's hatred of Jacob because the blessing had been bestowed upon him.

THE COVENANT OF JACOB AND LABAN.

Genesis XXXI.

Toward the end of Jacob's stay with Laban, after he had married and had acquired a great deal of property in cattle and slaves, Laban's sons, jealous of his increasing wealth, charged him with having gotten it out of that which was their father's. This charge evidently made an impression on Laban, for "Jacob beheld the countenance of Laban, and behold, it was not toward him as before." Whereupon Jacob concluded that it was time for him to leave Laban and go back to his home. He told his wives, Rachel and Leah, of his determination, assigning as a reason Laban's ill-will and mistrust. They answered him saying, "Is there yet any portion or inheritance for us in our father's house; were we not counted of him as strangers? for he hath sold us, and he hath quite consumed also our money. For all the riches which God hath taken from our father, that is ours and our children's; now then, whatsoever

God hath said unto thee, do." This answer of Jacob's wives sets forth clearly the position of women at that time.

The biblical account, as it has come down to us, was evidently written at a time when patriarchal law and custom prevailed. But there is evidence in this record of the story of Jacob and Laban that a matriarchal system either had preceded the other or was in some parts of Syria existing contemporaneously with it, and thus exerting some influence in modifying its provisions. From their answer to Jacob it would appear that Rachel and Leah were living in the patriarchal household, for their father had exercised the absolute right of disposing of them as though they had been slaves. They charged him with having sold them and instead of endowing them with the money received from their suitor, of greedily consuming it himself. When they ceased to be members of their father's household they came into the *manus* of their husband. Hence their statement that there was no longer any portion or inheritance for them in their father's house.

In the patriarchal society property descended to male heirs only, and it was not until after the decision in the case of Zelophehad's daughters that daughters had the right of inheritance before collateral kinsmen. Yet in this case the statement of Leah and Rachel assumes that if they had remained members of their father's family they would have had a share in his estate. This is one of the indicia of the influence of a system differing from the patriarchal in which kinship was reckoned through the females and property rights descended through them.

Jacob, having obtained the consent of his wives, took advantage of Laban's absence from home and secretly departed. Rachel stole her father's household gods, evidently for the purpose of carrying the household luck with her. According to the primitive conception of the Deity then current, the Lares and Penates formed as important a part of the household furniture as in much later days in Greece and Rome. When Laban heard of the flight of Jacob and his family, he pursued them and overtook them after a seven days' journey. There was a great deal of

bluster about Laban at their meeting and the reasons assigned by him for his pursuit were first, that Jacob had led away his daughters "as captives taken with the sword"; second, that he had stolen away secretly so that Laban had been deprived of the privilege of sending him away with the customary song and music, with which oriental courtesy sped the parting guest, and third, that he had stolen his gods. Laban's first reason implied that Jacob had no right to carry off his daughters even though they were now Jacob's wives. And there is in this a suggestion that, notwithstanding the belief of the women that there was no longer any portion or inheritance for them in the house of their father, their father still had certain authority over them and perhaps also over their husband. In other words, the implication is that Jacob by marrying Laban's daughters had really entered into Laban's family, and that Laban as chief of that clan had the patriarchal authority over him as well as his wives. It will be seen, therefore, that the legal status of Laban's daughters after their marriage is not clearly defined in this record. This may

be explained, as above stated, by the fact that the custom of this family was not purely patriarchal, but modified to some extent by matriarchal institutions. There is another explanation for this and other difficulties in this record. It is the opinion of some biblical scholars that the thirty-first chapter of Genesis is a fusion of two separate traditions of the same story.

In answer to Laban's first reason Jacob said that he fled secretly because he was afraid that Laban would exercise the *patria potestas* and take his daughters from him by force. The second reason he ignored as unworthy of a reply, probably because he had no doubt of Laban's insincerity. To his third reason he answered, "With whomsoever thou findest thy gods let him not live: before our brethren seek out thou what is thine with me and take it to thee." And then the record adds, parenthetically, "but Jacob knew not that Rachel had stolen them."

As to the right of the father to take his daughters from their husband, illustrations may be found in other portions of the Bible. King Saul took his

daughter Michal away from her husband David and gave her to another, and in the same manner Samson's father-in-law took his wife away from him. It is quite unlikely that, unless Laban had the right by virtue of prevailing custom to take his daughters from their husband, Jacob would have feared the exercise of such extraordinary power. There is nothing in the record to show that Laban was so absolutely conscienceless as to have been capable of compelling his daughters to leave their husband, especially after he had given them as wives to Jacob in return for fourteen years of service rendered to him by Jacob in caring for his flocks and herds. The real subject of controversy between Jacob and Laban came down to the question of the theft of Laban's household gods and upon this point the record contains much interesting information upon the law then prevailing concerning theft. "And Laban went into the tent of Jacob, and into the tent of Leah, and into the tent of the two maidservants but he found nothing. He then went out of the tent of Leah and entered into Rachel's tent." Rachel, who had hidden the images

under the saddle of her camel, prevented his searching there for them by an ingenious subterfuge, "And thus he searched but found not the images." It appears, therefore that, according to ancient custom, he who alleged theft had to prove it by finding the stolen articles in the possession of the thief and producing them before witnesses, who in this case were their "brethren." These "brethren" were probably the older members of the family or clan who constituted the family court for the settlement of all disputes arising within it. It also appears that the prosecutor had the right of search and had to be allowed free access to the dwelling of the suspected person in his effort to find the stolen goods. All this appears, furthermore, in Jacob's angry outburst after Laban's search, "What is my trespass? What is my sin that thou hast so hotly pursued after me? Although thou hast searched all my goods what hast thou found of all the articles of thy household? Set it here before my brethren and thy brethren that they may judge between us both." Jacob's indignation at the exercise of the right of search carried him further. This

was not the only grievance he had against Laban, it was but the last of a series of oppressive acts which he had suffered at the hands of his father-in-law. During the twenty years in which Jacob had been caretaker of Laban's flocks and herds Laban had frequently violated the law of master and servant and particularly the law as it applied to the herdsmen and shepherds.

Even in the most autocratic and tyrannical governments a system of private law arises based upon customs which are gradually established and universally observed, and although such laws and customs may be broken by the strong hand of a master, the natural sense of right of the community is offended and will not condone the fault. In the following sentences we may find the record of a number of such legal customs; Jacob said to Laban, "These twenty years have I been with thee; thy ewes and thy she-goats have not cast their young, and the rams of thy flock have I not eaten. That which was torn of beasts I brought not unto thee; of my hand didst thou require it, whatever was stolen by day or stolen by night.

Where I was in the day the heat consumed me, and the frost by night; and my sleep departed from mine eyes. These twenty years have I been in thy house; I have served thee fourteen years for thy two daughters, and six years for thy flocks; and thou hast changed my wages ten times. Except the God of my father, the God of Abraham, and the Fear of Isaac, had been with me, surely thou hadst now sent me away empty." This was the law of the shepherd, he was responsible for the care of the ewes and the she-goats that they might not cast their young prematurely. He was forbidden to kill the rams of the flock for food; he was responsible for the loss of any of the cattle under his charge which were killed by wild beasts or stolen either by day or by night; he was compelled, therefore, to be as vigilant during the night as during the day, because the loss had to be born by him. Hence Jacob said, "my sleep departed from mine eyes." The wages for the shepherd's service were fixed by agreement and could not be lawfully changed by the master except with the servant's consent, but Laban changed Jacob's wages ten times.

The property acquired by the servant while in the employ of the master could not be lawfully taken from him, and it appears that Laban would have broken this law, as he had broken the others, had it not been for the fear of Jacob's God.

The ancient code of law, the so-called "Book of the Covenant," which is found in the twenty-first to twenty-third chapters of Exodus, contains provisions which are of interest in this connection. If the servant was given a wife by the master and she bore him children, the woman and her children remained with the master at the expiration of the period of service and the servant went out alone (Exodus XXI, 2–4). This may account for the fear expressed by Jacob that "Peradventure thou wouldest take by force thy daughters from me." "If a man deliver unto his neighbor an ass, or an ox, or a lamb or any beast to keep and it die or be hurt, or driven away, no man seeing it; then shall an oath of the Lord be between them both, that he hath not stretched out his hand against his neighbor's goods; and the owner of it shall accept this and he shall not make it good."

Laban did not permit Jacob to offer any proof to show that he was guilty of no negligence. "If it be stolen from him he shall make restitution unto the owner thereof. If it be torn in pieces then let him bring it as evidence; that which was torn he shall not make good" (Exodus XXII, 9–12). Laban claimed damages from Jacob even for that which was torn by wild beasts at night.

The charge that Laban had changed his wages ten times is made not merely because of the general custom which required mutual consent to the change, but upon the express contract of Laban. When Jacob first entered his service Laban said to him (Genesis XXX, 28), "Appoint me thy wages and I will give them," and after Jacob had set forth his terms Laban said (verse 34), "Let it be according to thy word."

To all of Jacob's indignant charges Laban made no reply, but relying on some peculiar customary right he doggedly answered, "The daughters are my daughters, and the children are my children, and the flocks are my flocks, and all that thou seest is mine."

To this claim, backed by a sufficient force of men to make it effective, there could be no reply. Having thus asserted his right and power, Laban was overcome by another mood; either fear of the wrath of Jacob's God or simple paternal affection for his daughters and grandchildren suddenly overcame him and he added, "But as to my daughters, what can I do unto them this day or unto their children whom they have born?" He felt that to have exercised his alleged right would have wrecked their happiness; he thereupon promptly determined not to press his rights further, but to part in peace with Jacob, and he invited him to enter into a covenant, "and let it be for a witness between me and thee." Thus all their disputes were to be settled and ended and a solemn covenant of brotherhood was to bind them to remain at peace with each other in perpetuity.

The record proceeds to give the details of the formalities constituting this covenant. This record (verses 45–54) is evidently made up of two different accounts of the transaction. According to the

first account "Jacob took up a stone and set it up for a pillar," and he called it Mizpah (Hebrew: "watch tower"), for he (Laban) said, "The Lord shall watch between me and thee when we are absent one from the other; if thou shalt afflict my daughters, or if thou shalt take other wives besides my daughters, when there is no man with us: see, God is witness between me and thee. . . . Jacob swore by the Fear of his father Isaac. Then Jacob slew some cattle upon the mountain and called his brethren to eat bread and they did eat bread and abided all night upon the mountain." The mountain referred to is Mount Gilead, where Jacob had pitched his tent when Laban overtook him. "And early in the morning Laban rose up and kissed his sons and his daughters and blessed them: and Laban returned unto his own place."

According to this version of the covenant (which is found by reading together verses 45, 49, 50 and the end of 53 and 54 of this chapter) it was one of private law. Laban concluded not to exercise the *patria potestas,* but determined to leave his daughters

with Jacob, and in order to guarantee that they would receive fair treatment from their husband and that he would take no other wives beside them, he compelled Jacob to enter into this covenant with him. The principal incidents of entering into a covenant were first, the erection of some monument as a visible symbol; second, a solemn adjuration setting forth the terms of the agreement for which the sanction of the covenant was invoked; third, calling upon God to witness the compact; fourth, taking the oath to observe the compact, and fifth, offering up a sacrifice to the Deity and breaking bread together at the place of sacrifice.

In the other version (verses 46, 47, 48, 51, 52 and the first part of 53) the covenant was one of public law. "And Jacob (Laban?) said unto his brethren, Gather stones; and they took stones and made a heap; and they ate there upon the heap. And Laban called it Yegarsahadutha: (Chaldaic: "the heap of witness") but Jacob called it Gal-ed (Hebrew: "the heap of witness"). And Laban said This heap is a witness between me and thee this day. . . . And

Laban said to Jacob, Behold this heap which I have cast up between me and thee; witness be this heap that I will not pass by this heap and that thou shall not pass unto me by this heap for evil. The God of Abraham, and the God of Nahor (the God of their father) shall judge between us."

In this version of the covenant there is no mention of any private contract between the parties in reference to Jacob's treatment of Laban's daughters. It was a covenant entered into between two tribal chieftains dealing with each other as sovereign men, and is equivalent to a modern treaty of peace. In the patriarchal nomadic society there was no public law in the modern sense. Each family was an independent, autonomous state and the heads of the families dealt with each other as sovereigns, who settled their disputes either by an appeal to the sword, or by a covenant or treaty of peace. When it is remembered that in the land of Canaan, a territory not as large as the State of New Jersey, Joshua found and overcame thirty-one independent sovereigns it becomes apparent that kingship in those days simply meant the headship of a tribe or clan.

In the first version of the covenant a single stone was set up as a pillar; in this version stones were gathered and a heap was made and the sacrificial meal was eaten upon this heap. The making of this little hillock of stones has this further significance: According to primitive Hebrew notions the Deity was sought for and found on the high places, and the map of Palestine is, even to this day, dotted with names indicating that at some time these localities were sacred high places. Every mountain and hilltop had its local divinity, its shrine and sanctuary. When, therefore, Laban and Jacob entered into their treaty of peace they built up a miniature high place as a sacred symbol, and they made their sacrifice and sealed their covenant and ate their sacred meal upon this little "high place," thus invoking the presence of the Deity in a place similar to that upon which the Deity was supposed to dwell.

Covenants such as this were absolutely inviolable, and, with this knowledge of the meaning of the ceremony of the covenant, we can understand the horror of the phrase so often used by the prophets in Israel, "Ye have broken the covenant of your fathers."

THE BLASPHEMY OF THE SON OF SHELOMITH.

Leviticus XXIV, 10–23.

Among very primitive peoples, blasphemy as a crime is unknown. The gods are superhuman powers with superhuman attributes, who, however, conduct their affairs very much like human beings. In such a state of society any one, therefore, who offends the gods either by improper words, by robbing them of their sacrifices, or by desecrating their sanctuaries, is left to deal with them exclusively, and public law, so far as it exists, takes no cognizance of the crime. The gods are, so to speak, allowed to attend to their own affairs without interference from their human worshipers. If their sanctuaries are insulted, they are expected to smite the offender with their lightnings or with disease, or in some other way manifest their displeasure and resentment. But when a people has reached a national estate and has a national god, any offense against the deity becomes a national

crime, equivalent in some respects to high treason. When the national god is insulted, it is the national pride that is wounded, and, when the sanctuaries are robbed or desecrated, it is the national property that is stolen.

The transition from the primitive condition to the later stage in which the people take up the cause of their god is found in an interesting story in the sixth chapter of Judges, where Gideon threw down the altar of Baal and cut down the grove that stood by it. "And when the people of the city beheld what he had done and discovered who was the offender, they went to his father and said: Bring out thy son that he may die, because he hath cast down the altar of Baal and because he hath cut down the grove that was by it." And Joash, who was Gideon's father, said to them, "Will ye plead for Baal? If he be a god let him plead for himself because some one has cast down his altar." Although Baal was a deity worshiped by all the men of the city, yet the particular altar destroyed belonged to Joash, and inasmuch as Joash did not care to take vengeance for the

destruction of the altar, the men of the city allowed themselves to be persuaded not to do so, by the plea that if the offended deity did not avenge the wrong done to him, they need not be zealous for him.

The beginning of national self-consciousness among the Hebrews is shown in the case of the blasphemer, which is recorded in the twenty-fourth chapter of Leviticus. While the Israelites were in the wilderness after the exodus from Egypt, there went forth one of that "mixed multitude," the son of an Israelitish woman whose father was an Egyptian, and he and a man of Israel strove together in the camp, "and the son of the Israelitish woman pronounced the Name and blasphemed, and they brought him unto Moses. (And his mother's name was Shelomith, the daughter of Dibri, of the tribe of Dan.) And they put him in ward to ascertain the law according to the mouth of the Lord; and the Lord said unto Moses: Bring forth the blasphemer without the camp, and let all who heard him lay their hands upon his head, and let all the assembly stone him. . . . And Moses spoke to the children of Israel, and they

brought forth the blasphemer out of the camp and stoned him with stones; and the children of Israel did as the Lord commanded Moses."

That this was a case of first impression is shown by the fact that Moses did not venture an opinion off-hand, but had the prisoner put in ward until he had consulted the Lord. Inasmuch as the court pronouncing judgment spoke in the name of God, and its judgment was considered the judgment of God, the phrase here used, "to ascertain the law according to the mouth of the Lord" is simply another way of saying that the court deliberated for the purpose of reaching a decision, which, *ipso facto,* was inspired of God. The difficulties that the case presented to the court were these: Was there a crime committed? Was the offender punishable? What punishment should be meted out to him?

The fact that this man was arrested indicated that public opinion had at this time been sufficiently crystallized to warrant public officials in taking cognizance of the act as a crime. This man had pronounced the name of God and cursed. We are not told what

he said, but it has been supposed that his crime consisted in pronouncing the ineffable name of God accompanied by a curse.

The second question was a more difficult one. Assuming that the offense was a crime if committed against Israel's God, by one of the house of Israel, what was to be done to a man whose father was an Egyptian and whose status as a son of Israel was therefore doubtful? Is it a crime to blaspheme the name of a god in whom one does not believe? Could the son of the Egyptian be held amenable for this crime? It appears that Moses' decision is based on the general principle of the law which provided that the child follows the status of the mother, and as she was an Israelitish woman, her son was considered an Israelite, irrespective of his paternity. This is, furthermore, emphasized by the fact that the record is careful to give his mother's name and pedigree. But what would have been the decision had he been the son of an Egyptian woman? The question is not answered in this case, but it evidently must have arisen, for as we shall shortly see, in the general law

that was promulgated on this subject, this case is provided for.

The court consulted and decided that a crime had been committed, that the offender was amenable to the law, and that he should be stoned to death. In the sentence of the court, the witnesses, that is, those who heard the blasphemy, are directed to place their hands upon his head. This was analogous to the custom of sacrificing, where the persons bringing the sacrifice placed their hands upon the head of the sacrificial animal. The animal was offered by the hands of the persons who sacrificed to the deity, and their sins or offenses were to be atoned for by the sacrificial offering. Thus the persons who were in a sense parties to the crime, merely from having heard the blasphemy, offer the offender as a sacrifice to the insulted deity, and thereby avert the divine wrath from themselves.

The blasphemer was stoned to death by "all the assembly (Hebrew: Edah), the select men of the people, who acted as executioners, and perhaps were also the associate justices with whom Moses deliberated before rendering judgment.

After the sentence of the court was carried out, a general law to cover this and similar cases was formulated. Judging from the proximity of the text of this special case and the general law, it might be supposed that the latter was passed immediately after, or even before, the execution of the sentence, but, the mere proximity of laws or texts in the Bible proves nothing regarding their chronology. The general law was no doubt much later than the special case which is here cited, and sums up the law on the subject in a brief sententious manner, thus: "And thou shalt speak unto the children of Israel saying, Whoever curseth his god shall bear his sin, and he that pronounceth the name of the Lord shall be put to death, and all the assembly shall stone him; as well the stranger as the native when he pronounceth the Name shall be put to death."

The general law seems to have been especially made to cover the point that was raised but not decided in the case of the son of the Egyptian. If he had been the son of an Egyptian woman he would not have been an Israelite; and the question as to whether he

could have been punished would have been a more difficult one. This question is now settled. The stranger as well as the native is punishable with death if he blasphemes the name of the Lord. If the stranger blasphemes his own gods the Jewish law takes no cognizance of it. If a man blasphemes his god let him bear his sin—let him suffer such punishment as his god may mete out to him; but if he pronounces the name of the Lord, and is, for the time being under the jurisdiction of the Jewish law, let him be punished with death.

That the crime of blasphemy was akin to the crime of treason is shown in several other passages of the Bible. Isaiah speaks of the people cursing their king and their god (Isaiah VIII, 21), and in Naboth's case (1 Kings XXI, 10), the crime with which he was charged was "Thou didst blaspheme God and the King." It indicates what was before stated, that when the people attained national dignity the national god was guarded like the king, and offenses against him were similarly punished. As long as the people were living in a patriarchal state an offense

against the gods was an offense against the head of the family, for the gods were household gods; and this we see in the case of Gideon, whose offense really was against his father in breaking down his father's altar and sacred grove.

So careful were the Jews not to utter the sacred name of God that the original pronunciation of the name of Jehovah has been lost, and it is only as a result of modern painstaking scholarship that its probable sound "Yahweh" has been recovered. The early translators of the Bible carefully avoided it; the Greek translated it "Ho kuriós"; the Latin translated it "Dominus," both meaning "Master" or "Lord"; and from these translations we have the modern terms, "Lord," "Herr," "Sieur," and the like.

Josephus, in his desire to curry favor with the Romans, went so far as to say that according to Jewish law it was a crime to blaspheme other gods; but the law in the Case of the Blasphemer is clearly to the contrary.

The reader of the Bible will find appended to the

law of the Blasphemer, and apparently forming a part of it, certain laws (Leviticus XXIV, 17–22) which have nothing to do with the law of the blasphemer, and have been interpolated because they also refer to capital crimes, and lay down the general law that the stranger and the native are equally liable.

In order, therefore, to read properly the Case of the Blasphemer as it is recorded in the twenty-fourth chapter of Leviticus, read first from verse 10 to verse 14 inclusive, and then read verse 23, which will be found to connect directly with verse 14. Verses 15 to 22 are obviously interpolated. Verses 15 and 16 should be read after verse 23, and with these verses the law concerning blasphemy is concluded.

THE CASE OF ZELOPHEHAD'S DAUGHTERS.

Numbers XXVII, 1–11, XXXVI, 1–13; *Joshua* XVII, 1–6.

This case is unique. It is the only case reported in the Bible in which property rights are decided by a regular judicial proceeding, and in which the parties are known. It is unique, furthermore, because of the reopening of the case upon the petition of the defendants and the intrusion of a political question to modify the original decision. The case is reported three times, a fact which sufficiently indicates its importance. The account in Numbers, chapter XXVII, begins thus:

"Then came the daughters of Zelophehad, the son of Hepher, the son of Gilead, the son of Machir, the son of Menasseh, of the families of Menasseh, the son of Joseph: and these are the names of his daughters, Mahlah, Noah, Hoglah, and Milcah and Tirzah." Here for the first time we have a record of women appearing as plaintiffs. This is the more remarkable

when we consider the status of women in the ancient oriental society. "And they stood before Moses, and before Eleazar the priest, and before the princes and all the assembly, by the door of the tabernacle of the assembly." The high court before which this case was presented consisted of Moses, representing the political power; Eleazar, the high priest, representing the ecclesiastical power, and the princes or chieftains, representing the tribal organizations, and the assembly or selectmen. The Court sat at the door of the sanctuary. Anciently, the judgment place was at the gate of the town where the market place was; later on it was at any one of the gates of the city. Finally, the notion that judgment was spoken at the gate had become so familiar that when the court was removed to the sanctuary at Jerusalem, it sat at the door of the sanctuary, even as in the report of this case it sat at the door of the tabernacle in the wilderness.

The five women then approached the court in session saying, "Our father died in the wilderness and he was not in the company of them that gathered

themselves together against the Lord in the company of Korah''; hence was not attaint and could transmit his inheritance, ''but died in his own sin,'' a natural death, ''and had no sons.'' Hence his inheritance would, under the old law descend to collateral kinsmen, and the name of the deceased would be forgotten in his family. Against this his daughters protested, ''Why should the name of our father be done away from among his family, because he hath no son?'' Why should not the name be perpetuated through the daughters and the family inheritance descend to them? There was no equitable reason for refusing their petition, ''Give unto us therefore a possession among the brethren of our father.'' It seems that some of the tribal customs still showed traces of the matriarchal state of society, in which kinship was reckoned through the females and the devolution of property followed a similar rule. The matriarchate was not entirely unknown among the ancient Hebrews and there are Bible references which are inexplicable upon any other theory. Perhaps some such traditional rights had persisted, unchanged

by the common law of the nation, in certain families of Menasseh, or perhaps in the whole tribe, just as customs of the manor persisted in England, and local customs everywhere survive the leveling tendency of general legislation. At any rate, the problem presented to the Court was not one to be dismissed by mere reference to the law limiting the right of inheritance to the males, and the court retired to consult, "And Moses brought their cause before the Lord."

If we follow the orthodox interpretation of this verse, it means that Moses went to consult God to obtain light in this case, and, as the next verse shows, God gave him a decision. No doubt the writer of the narrative in the Book of Numbers believed that this was the manner of the procedure and that Moses actually was directed by God to decide the case as he did. It is not unlikely, however, that the true procedure was simply this: That Moses retired with or without the rest of the Court to consider the question, and finally rendered the decision. The Oriental looked upon the judge as the actual representative of

God, and the judgment as the decision of God himself, probably because of the fact that the judge was usually the priest. From this idea arose the notion that judgment when rendered in righteousness is divine, and that the mouth of the judge is as the mouth of God. In the Talmud we find that the general dictum, "The words of the rabbis are as acceptable as the words of the Torah," means simply that the rabbis, by virtue of the fact that they were the lawful judicial authorities, had the right to render decisions, and that their decisions had the same force as the written word of God. This view is generally accepted in the Talmud, and is commonly attacked by non-Jewish theologians, because it minimizes the importance of the written word of the Bible, and hence interferes with the dogmatic superstructures that theology has reared upon the biblical texts. But no written law is sufficient for all times, and men must interpret, extend, even repeal it, when the conditions of human life compel, for the law was made for man.

After Moses had "consulted God" he reached a

decision, "The Lord spoke unto Moses saying, The daughters of Zelophehad speak right; thou shalt surely give them a possession of an inheritance among their father's brethren; and thou shalt cause the inheritance of their father to pass unto them." Thus far the decision in this case. No reason is assigned for it and no general principle is laid down as its foundation. It appears to have been a judgment rendered in this case because of some circumstances unknown to us—more than likely because of some special rule of inheritance which existed in this family or tribe. If we note the precision with which the names of the parties and their pedigree are given in the opening verses, we are strengthened in the view, that the decision was one which was dictated by a special custom obtaining in this family or tribe, more especially when it is noted that in the report of this case in Joshua XVII, 1–6, the following rule is stated: "because the daughters of Menasseh had an inheritance among his sons." It seems to distinguish the tribe of Menasseh from the other tribes and limit the rule to them. This is in full harmony with the

theory that this was a special case, decided according to a custom peculiar to that tribe, and that it was not until afterwards that the decision in Zelophehad's case became a general law. It is true that in the biblical text the general law is cited immediately after the decision. But, as has been said, the mere proximity of laws in the Bible is no proof of their relative chronological order.

The general law of intestate succession which was based on this decision was as follows, "And thou shalt speak unto the children of Israel, saying, If a man die and have no son then ye shall cause his inheritance to pass to his daughter, and if he have no daughter, then ye shall give his inheritance unto his brethren. And if he have no brethren, then shall ye give his inheritance unto his father's brethren. And if his father have no brethren, ye shall give his inheritance unto his kinsman that is next to him of his family, and he shall possess it: and it shall be unto the children of Israel a statute of judgment, as the Lord commanded Moses."

The decision rendered by the court was, however,

not allowed to rest undisturbed. By it the daughters of Zelophehad had been declared to be the lawful heiresses of their father's estate. The parties aggrieved were the next of kin, who, in default of male issue, had, under the general custom, the right of inheritance. They were, therefore, practically the defendants in the original proceeding, which may be likened to an action of ejectment brought by the daughters to try the title to their father's estate. The defendants appealed from the decision and sought to have the case reopened. (Numbers XXXVI, 1–13) "And the selectmen of the families of the children of Gilead the son of Machir, the son of Menasseh of the families of the sons of Joseph, came near and spake before Moses, and before the princes, the selectmen of the children of Israel." The selectmen were under the patriarchal system the representatives of their respective families, the presidents, as it were, of the several little corporations which constituted the tribe, "and they said, the Lord commanded my lord to give the land for an inheritance by lot to the children of Israel; and my lord was commanded by

the Lord to give the inheritance of Zelophehad our brother unto his daughters. And if they be married to any of the sons of the other tribes of the children of Israel, then will their inheritance be taken from the inheritance of our fathers and be added to the inheritance of the tribe whereunto they shall be received; so will it be taken from the lot of our inheritance. And when the jubilee of the children of Israel shall be, then will their inheritance be added to the inheritance of the tribe whereunto they are received; so shall their inheritance be taken away from the inheritance of the tribe of our fathers."

The point made by the defendants was based upon the fundamental conception of the tribal ownership of land. The individual had the perpetual use thereof in his own family, but land was inalienable, except with the consent of the tribe. The decision in Zelophehad's case had unsettled this rule. By making the women absolute heiresses in default of male issue, it subjected the property to the danger of absorption by other tribes in the event of the marriage of an heiress outside the tribe of her father, and there

would be eventually a mixing up of tribal lines that would obliterate them altogether. The case seems to mark the transition from the tribal to the individual ownership of land and from the old tribal organizations into the greater national union of all Israel. The chiefs of the tribe of Joseph were not yet prepared for this step, for, as they pointed out, at the time of the jubilee, when every man's land returned to him or his heirs, this land would no longer return to the members of the tribe of Menasseh, but would fall to some descendant of the daughters of Zelophehad, who would not be a member of the tribe of Menasseh, but of the tribe to which the husband of the heiress belonged. This had to be guarded against. The court was impressed with the force of the argument, and apparently held the same conservative view concerning the political question involved. It, therefore, reopened the case and modified the decree already made. "And Moses commanded the children of Israel according to the word of the Lord, saying, The tribe of the sons of Joseph hath said well. This is the thing which the Lord doth command concerning

the daughters of Zelophehad saying, Let them marry to whom they think best; only to the family of the tribe of their father shall they marry. So shall not the inheritance of the children of Israel remove from tribe to tribe; for every one of the children of Israel shall keep himself to the inheritance of the tribe of his fathers." This decision, therefore, prevented the injury to the tribal rights of the defendants, and established the right of inheritance of the daughters upon the condition that they marry within their own tribe.

We are assured, however, that the five young women through whose case the law of Intestate Succession was established were wise enough not to forfeit their inheritance, for, "even as the Lord commanded Moses so did the daughters of Zelophehad: for Mahlah, Tirzah, and Hoglah and Milcah, and Noah the daughters of Zelophehad, were married unto their father's brothers' sons; and they were married into the families of the sons of Menasseh the son of Joseph, and their inheritance remained in the tribe of the family of their father." As in the

former decision of this case, the ruling of the court became the basis for a general statute, "And every daughter that possesseth an inheritance in any tribe of the children of Israel shall be wife unto one of the family of her father, that the children of Israel may enjoy every man the inheritance of his fathers. Neither shall the inheritance remove from one tribe into another tribe; but every one of the tribes of the children of Israel shall keep himself to his own inheritance." Thus the special custom of the tribe of Menasseh became, through the medium of the case of Zelophehad's daughters, the general law for all Israel.

The interest of this case lies in the fact that it is a guide to the manner in which the ancient customs of the wandering Hebrew tribes crystallized into law and it shows how the local or special custom of the dominant tribe might become the general law of the land. For the influence of the tribe of Menasseh was very great, since it was a division of the great tribe of Joseph, the ruling tribe in northern Palestine.

THE TRIAL OF ACHAN BY LOT.

Joshua VII, 1–26.

Among the Hebrews, God was supposed to be present in the courts of justice, and judgment was pronounced in his name. The trial of a case, therefore, partook somewhat of a sacramental character. As has already been suggested, this was due, no doubt, to the fact that, at a certain period in the history of the people, the offices of priest and judge were united; and the people went to the priest to decide their disputes, even as they went to him for guidance in religious matters. Divination and sorcery in their various forms were practiced, and decisions and opinions obtained by these means were given by the priests. One method of obtaining a decision was by casting lots. "Chance" was not, as with us, deemed fortuitous, but was supposed to be a direct result of divine action. Hence, the casting of a lot, when done by one in office, was supposed to be an expression of divine will, and gave the issue in doubtful matters.

A remarkable instance of the use of the lot in the determination of a question involving life and property is furnished in the recorded case of Achan, in the seventh chapter of the Book of Joshua. The circumstances of the case are as follows:

After the city of Jericho had fallen, the entire city with all its inhabitants, and with all the property contained in it was ordered to be destroyed. It was "Herem," that is, devoted to God. It is recorded (Joshua VI, 21) that the Hebrews "utterly destroyed (devoted) all that was in the city, both man and woman, young and old, and ox and sheep, and ass, with the edge of the sword." It seems, however, that one Achan had secretly appropriated some of the spoils of the devoted city. As a result, God is said to have been angry with the people, and to have withdrawn his favor and assistance from them, so that they could not maintain themselves against the foe.

When Joshua was informed of this fact, he determined to regain the divine favor by discovering and punishing the offender, a problem that presented

no difficulties to him, since he did not depend upon human testimony to discover the criminal. He, therefore, notified the people, "Sanctify yourselves for the morrow, for thus saith the Lord, the God of Israel, There is Herem in thy midst, oh Israel; and thou canst not stand before thine enemies until ye take away the Herem from your midst. In the morning therefore, ye shall be brought according to your tribes and it shall be that the tribe which the Lord shall seize shall come according to its families; and the family which the Lord shall seize, shall come by households; and the household which the Lord shall seize, shall come man by man; and it shall be that he that is seized with the Herem shall be burnt with fire, he and all that he hath, because he has transgressed the covenant of the Lord, and because he has wrought folly in Israel."

God himself was going to discover the offender by a means which is not fully expressed in the biblical record, but which appears clearly enough. At the central sanctuary of the camp, the priests were to cast lots for the various tribes of Israel, and the tribe

which was "seized," that is to say, which was marked by the fatal lot, was to be balloted for according to its families and the family according to its houses; and the house according to its members, one by one; and thus the lot would ultimately fall upon one man who would thereby become known as the offender.

Skeptical critics see in this method of discovering the offender merely a piece of chicanery on the part of the priests, who are presumed to have discovered the real offender by more natural means, and to have resorted to this remarkable method of discovering him merely for the purpose of overawing the people and strengthening their own power over them. It is more likely that the determination of the offender by lot was resorted to, so as to obtain through fear a confession from the guilty person. However it may be, this procedure was followed, and the lot eventually fell on Achan, the son of Carmi, the son of Zabdi, the son of Zerah, of the tribe of Judah.

Had this method of fixing the guilt on the real offender been believed to be unfailing, Achan would immediately have been put to death. The record,

however, shows that Joshua was by no means convinced that Achan was the real offender, and he said to him, "My son, give, I pray thee, honor to the Lord, the God of Israel and make confession unto him, and tell me now what thou hast done. Do not hide it from me."

Joshua, from his general experience in warfare, probably knew that it was no uncommon thing for the soldiers to appropriate some of the spoils of war, and that, in all probability, many of the soldiers had offended in this manner at the fall of Jericho. To make an example of one was deemed sufficient, and Joshua no doubt felt satisfied that, if the lot fell upon any one of those who had been guilty, a confession of guilt would eventually follow. It was, therefore, unnecessary for Joshua to compel Achan to confess by threat. His simple request for information was followed by a full confession, "And Achan answered Joshua and said, Indeed, I have sinned against the Lord, the God of Israel, and thus and thus have I done. When I saw among the spoils a goodly Babylonian cloak, and two hundred shekels

of silver and an ingot of gold of five hundred shekels weight, then I coveted them and I took them, and behold they are now hid in the earth in the midst of my tent; and the silver under it." Joshua thereupon sent messengers to Achan's tent and discovered the articles which he had described, and then there was meted out to Achan the punishment for his offense, in accordance with the law of the times which "visited the iniquities of the fathers upon the children," a law which was not changed until the promulgation of the Deuteronomic Code, wherein it was ordained that "fathers shall not be put to death for the children, neither shall the children be put to death for the fathers: for his own sin shall every man be put to death" (Deuteronomy XXIV, 16).

According to the old patriarchal notion, the family was a unit and its members were held responsible for the conduct of each other. Hence the children suffered for the crime of the parent and *vice versa.* Under this fierce law, a crime resulted in the blotting out of an entire family, and it was not until late in the time of the Kings that a more modern notion of

the nature of crime prevailed. The individual was made responsible for his acts, and the family was no longer compelled to suffer for the crime committed by any one of its members. The old notion, however, of the solidarity of the family has not entirely died out, even in our own day. It expresses itself very often in social ostracism of the innocent members of a criminal's household. Modern society unconsciously testifies to the old belief, that blood relationship attainted all those who were connected with the real offender.

Joshua then proceeded to execute the sentence of the law and he took Achan and the silver and the cloak, and the ingot of gold and his sons and his daughters and his oxen and his asses and his sheep, and his tent and everything that he had, and brought them up to the Valley of Achor, and there Joshua said to Achan, "As thou hast troubled us, the Lord shall trouble thee this day; and all Israel stoned him with stones and burnt them with fire, and stoned them with stones, and they raised over him a great heap of stones unto this day."

Although Joshua and the people of Israel were at the time conducting a great military campaign in the enemy's country, they, nevertheless, in stoning Achan outside the camp, observed the old custom of taking criminals outside the boundaries of the town for execution. Later in the history of the Jewish people, the larger towns had a regular place of execution outside the walls, which was shunned by the people, just as the people in later days shunned the gallows tree.

THE CASE OF JEPHTHAH'S DAUGHTER.

Judges XI, 29–40.

For the study of ancient law and custom, the Book of Judges and the Book of Genesis are the most important in the entire Bible. The former especially is replete with traditions hoary with age, reflecting conditions of law and society remotely anterior to the legislation found in the Pentateuch, and to the condition of society described in the Book of Kings. Much of the Pentateuchal legislation presupposes a well-organized society, differing materially from that described in the Book of Judges, when "there was no king in Israel; every man did that which was right in his own eyes."

The fate of Jephthah's daughter was determined by his success in his campaign against the Ammonites. After he entered the enemy's country, "Jephthah vowed a vow unto the Lord and said, If thou wilt deliver the sons of Ammon into my hands, then shall it be that whatsoever cometh forth out of the doors

of my house towards me when I return in peace from the sons of Ammon, shall surely be the Lord's and I will offer it up for a burnt offering."

It was no uncommon thing among the ancients, the ancient Hebrews included, for men to seek the favor of the Deity by making vows, the performance of which depended upon the success of some contemplated undertaking. Such a vow was in the nature of a contract, whereby the maker of the vow agreed that in case success attended his enterprise, he would perform certain services or offer certain sacrifices or subject himself to certain penance pleasing to the Deity. These vows were made with solemn formality and were absolutely binding and irrevocable, and, if the wish of the person making the vow was granted and his enterprise successful, the fear of offending the Deity by breaking the vow was the only sanction required to insure its fulfillment. Thus, Jacob on his way to Laban's house, on the morning after he had his dream of the angels ascending and descending the ladder reaching to heaven, was filled with fear, and he sanctified the place in which he had been

sleeping by setting up a pillar there and consecrating it with oil. Conscious of the proximity of the Deity, he entered into a contract with him which was expressed in these words (Gen. XXVIII, 20–22): "And Jacob vowed a vow, saying, if God will be with me in this way that I am going; and will give me bread to eat and raiment to put on, so that I come again to my father's house in peace, then shall the Lord be my God, and this stone which I have set up for a pillar shall be a house of God; and of all that thou shalt give me, I will surely give a tenth unto thee."

When Jephthah made his vow and promised to offer up as a sacrifice whatever came forth to meet him from the doors of his house, it is quite likely that he meant a domestic animal, or a slave; and his consternation and grief upon seeing his daughter come forth to meet him strengthens this view. At any rate, after having made his vow, "Jephthah passed over unto the sons of Ammon to fight against them, and the Lord delivered them into his hands. And the sons of Ammon were subdued before the sons of Israel."

"And Jephthah came to Mizpah unto his house; and behold, his daughter came out to meet him with timbrels and dances; and she was his only child. Besides her, he had neither son nor daughter. And it came to pass when he saw her, that he rent his clothes and said, Alas, my daughter, thou hast brought me very low, and thou art one of them that trouble me, for I have opened my mouth unto the Lord, and I cannot go back." So great was the fear of offending the Deity by breaking the vow, that Jephthah, this unconquered warrior, returning from a victorious campaign, master of a great army, never thought of escaping the consequences of his vow, even though it involved the loss of his only child. He had opened his mouth unto the Lord and he could not go back.

Furthermore, there may be seen here the extent of the *patria potestas.* There was no public tribunal before which matters affecting the family could be brought for decision; in each household the head of the family was of indisputable authority, the absolute arbiter, from whose decision there was no appeal.

Public law took no cognizance of family matters; and family law, so far as it may be called law, was simply the expressed will of the head of the household. The fact that the case of Jephthah's daughter excites no comment on the part of the biblical writer, even though she was offered up as a sacrifice by her father in fulfillment of a vow, indicates that the writer accepted the view that Jephthah's right to kill his daughter was undisputed and indisputable.

It may be that if his daughter had pleaded for her life, Jephthah might have been induced to brave the wrath of God and break his vow; but her answer to him is not only an illustration of sublime resignation, but also a shining example of determination to fulfill a contract solemnly entered into. She said unto him, "My father, if thou hast opened thy mouth unto the Lord, do to me according to that which hath proceeded out of thy mouth; forasmuch as the Lord hath taken vengeance for thee of thine enemy, even the sons of Ammon." It was not merely, therefore, that she urged him to fulfill his vow, but also that she called his attention to the fact that in the con-

tract made between God and himself, God had fulfilled his part, and it now behooved him to do likewise. And she said unto her father, "Let this thing be done to me, and let me alone for two months that I may go up and down the mountains and bewail my virginity, I and my companions." This brief respite before the execution of his vow was granted to her, and at the end of that time, she returned to her father, "And he did unto her according to his vow which he had vowed."

Human sacrifice is alluded to several times in the Bible, and it was not until after the time when the theory of the rights and duties of the patriarchal family had undergone considerable modification that positive legislation put an end to it. As long as the father was the master of his own family, accountable to no man for his actions concerning it, there was no way in which his power could be limited. This theory remained in full force as long as the Hebrews lived a nomadic life, and even some time after they had settled in Palestine; but gradually the requirements of a milder civilization, and

the influences of agricultural life, which requires men to dwell together in harmony and peace, modified the ancient rights of patriarch. Under such conditions public opinion became possible, and eventually public opinion became law. The father could no longer put his children to death because public opinion would not permit it; and thus gradually the unrestricted right of the patriarch was modified, and the members of his family obtained a legal status and legal rights, until eventually the individuality of each human being was respected and protected by the law.

The views of the Talmudical authorities on the law of the case of Jephthah's daughter are interesting, because in their interpretation we may discover fragments of the old Common Law of the Hebrews, and observe something of the method by which the written law was applied in actual practice.

For instance, there is a law that certain animals are unclean and, therefore, unfit for sacrifice; a law that is not alluded to in the record of this case. But a Talmudist very pertinently asks: Suppose an unclean animal had come out of Jephthah's house to

meet him. Would he have offered it as a sacrifice to the Lord? The reply was that as an unclean animal was unfit for sacrifice, Jephthah would not have offered it had it come forth to meet him. Another Talmudist raises a more important question. It was possible under the Talmudic law for a man to have his vow annulled if it was made under mistake or under duress—a proceeding somewhat similar to the rescission of a contract in our own days, upon the ground of accident, mistake and the like. Hence the Talmudist asks: "Why did not Jephthah go to the high priest and have this vow annulled?" According to tradition, Phineas, the grandson of Aaron, was high priest in those days, and Jephthah might have applied to him as the supreme judicial authority to annul his vow, and thus save his daughter's life. Another Talmudist answers, that Jephthah must have had some special reason for not making such application, or that Phineas must have had some special reason for not granting it, presuming that it was made. Another lawyer, leaving the safe ground of the law, reports soliloquies

of Phineas and Jephthah concerning this case. Phineas, being high priest, said: "If Jephthah wants his vow annulled, let him come to me," and Jephthah, being commander-in-chief of the army, was too proud to go to Phineas, and demanded that Phineas should come to him; and thus between the pride of these two dignitaries, the girl was sacrificed. Then another lawyer took part in the discussion, saying: "If it is true that Phineas and Jephthah in their pride permitted the girl to go to her death, then they were her murderers, and should have been held responsible, and ought to have been punished." Assuming the premises, the conclusion was not improperly drawn. The facts and legal ideas added by the Talmudists to the biblical records were the result of their knowledge of the unwritten legal tradition, and not, as so many modern critics would have it, of their overfondness for speculation and theorizing. There is no doubt that the biblical records are incomplete. Only a fragment of the written law has come down to us, and, since the bulk of the law was transmitted by oral tradition, the

entire written law, including such parts as may have been lost, was only a fragment of the whole body of the law. Hence the traditions, interpretations, customs, cases and opinions, transmitted from generation to generation by men whose business it was to know the law and expound it, and finally gathered in the Talmud, must ever be of the greatest value in explaining and understanding the Bible.

THE CASE OF BOAZ AND RUTH.

Ruth I–IV.

The Book of Ruth contains only four chapters, but because of the unaffected picture of ancient manners that it presents, it is generally considered one of the most interesting books in the Bible. The principal legal questions presented in this book are the ones involving the right of inheritance to land under the law of intestate succession, and the questions arising out of the right of redemption of an estate of inheritance by the nearest kinsman so that it may not fall into the hands of strangers, and that the "name of the dead may be raised upon his inheritance." It is probable that the Book of Ruth was written long after the events which it narrates. There is slight evidence of this in the peculiar phraseology of the fourth chapter, seventh verse, "Now this was the manner in former times in Israel." The facts of the case, so far as they interest us in their legal aspect, are these:

Elimelech, living in Bethlehem, owned an estate in land. During a famine, he, together with his wife, Naomi, and his two sons, Mahlon and Chilion, left his home and went down into Moab and dwelt there. Elimelech died, leaving his widow and two sons surviving him. The latter married Moabitish women; the name of the one was Orpah and the name of the other Ruth; and they continued to live in Moab for about ten years. Then both the sons, Mahlon and Chilion, died, leaving no children, and their mother, Naomi, was left with her two daughters-in-law. She then determined to return to Bethlehem, and attempted to persuade her daughters-in-law to return each to her mother's house. One of them, Orpah, did as she requested; the other, Ruth, insisted upon accompanying her, saying, "Whither thou goest, I will go; where thou lodgest, I will lodge; thy people shall be my people, and thy God, my God; where thou diest will I die, and there will I be buried." So Naomi and Ruth returned to Bethlehem.

What was the legal status of the parties with reference to Elimelech's estate of inheritance?

When Elimelech died leaving a widow and two sons, his estate descended absolutely to his two sons, the older of whom obtained a double share. It is not known which of the two sons was the first to die, but this is a matter of no importance, because either would have inherited from the other. Both of them being dead, the estate descended to the nearest male kinsman of the sons of Elimelech, subject, however, to a certain inchoate right existing in the widow of the last owner, which will be considered later.

When Naomi and Ruth returned to Bethlehem they were so poor that the younger woman had to glean in the fields behind the reapers, for the purpose of gathering enough food to maintain them. The Poor Laws of the Jews provided that the gleanings of the harvest should not be gathered by the owner of the field, but must be left on the ground for the poor and stranger; and it was by virtue of this beneficent law that Naomi and Ruth were able to subsist without demanding alms. It chanced that Ruth gleaned in the field of Boaz, a kinsman of Elimelech, and when this was made known to Naomi, she conceived

a plan of bringing Boaz and Ruth together in the hope that he, as her kinsman, would marry Ruth and provide for them; and the plan succeeded. The beauty and modesty of Ruth attracted Boaz, and he promptly fell in love with her. Now came the real difficulty. Boaz was not the nearest kinsman, and hence had no right to Elimelech's estate. There was one nearer than he. Boaz determined to settle this matter immediately, and to ascertain legally whether or not the nearest kinsman was prepared to take the inheritance, or whether he would renounce his rights. This leads to the beginning of the fourth chapter of the Book, in which the full procedure in this case is given: "Now Boaz went up to the gate," this being the place of public meetings and the seat of the council of elders of the town, "and sat down there, and behold the near kinsman (Hebrew: Goël) of whom Boaz spoke, passed by, unto whom he said, Ho, such an one! turn aside; sit down here; and he turned aside and sat down."

Boaz then proceeded, "and took ten men of the elders of the city and said, Sit ye down here; and

they sat down." The ten men thus selected from among the elders constituted the court in whose presence the formalities attending the redemption of the land were to be performed. Their duties in this case were very simple. They were merely required to attest the correctness of the procedure. It is interesting to note that unto this very day among the Jews ten men constitute a quorum in religious matters; thus, ten men are a congregation; ten men are usually required to attest certain juridico-religious acts, such as marriage, or the granting of a bill of divorce, and the like.

When the court had convened, Boaz arose, "and he said to the Goël: Naomi, who has returned from the land of Moab is selling a parcel of land which belonged to our brother Elimelech, and I thought to inform thee saying, Buy it before those who sit here and before the elders of my people. If thou wilt redeem it, redeem it; but if thou wilt not redeem it, then tell me, that I may know; for there is none to redeem it beside thee; and I am after thee. And he said, I will redeem it." Then Boaz said, "On the

day that thou buyest the field from the hands of Naomi, from Ruth also, the Moabitess, the wife of the dead, must thou buy it, to raise up the name of the dead upon his inheritance; and the Goël said, I cannot redeem it for myself, lest I mar my own inheritance; do thou take my right of redemption on thee, for I cannot redeem it."

Although the land is spoken of here as though it was going to be sold, the word "sell" does not truly express the nature of the transaction. It was a transfer of the possession of the land to the kinsman, and it was coupled with the duty of marrying the wife of the dead. By a legal fiction the son born of this marriage continued the family of the dead and thus "raised up the name of the dead upon his inheritance."

When Boaz first spoke to the Goël he made no mention of Ruth, saying, "Naomi is selling the parcel of land which was our brother Elimelech's." Now, it was known to the Goël that Naomi, the wife of Elimelech, had two children, Mahlon and Chilion, and, therefore, it would not have been necessary for

the Goël to marry her, this being required only in the case of a childless widow; hence he expressed his willingness to redeem or acquire the land; but when Boaz added that "on the day that thou buyest the field from the hand of Naomi, from Ruth the Moabitess, the wife of the dead, thou must also buy it to raise up the name of the dead upon his inheritance," then the Goël refused to exercise his right of redemption; he evidently did not want to marry Ruth. It was Ruth, the widow of the last owner, who must be taken along with the land by the nearest kinsman. Naomi was mentioned apparently because she was known as the wife of Elimelech, whereas, Ruth, who had been married to Mahlon in Moab, was not commonly known as his wife; and it may be, that the fact that Ruth was a foreigner had something to do with the precedence accorded to Naomi on this occasion. There is no doubt, however, that although Ruth was a Moabitess, she, by her action and by her words in following Naomi to Bethlehem, in adopting Naomi's country, her God and her domicile, became, according to the ideas of those times, thoroughly

naturalized; whereas, Orpah, the widow of Chilion, who returned to her mother's house in Moab, remained an alien.

The question may be asked: If the land was Elimelech's, and the nearest kinsman had to marry Ruth, the widow of Mahlon, what is the meaning of the phrase "that the name of the dead may be raised upon his inheritance?" Jewish law considered the family, and not the individual, as the unit. As long as the family was kept up, the name of the individual was of no consequence, so that the child of Ruth as fully represented Elimelech as it did Mahlon; and in the same manner it represented all the ancestors of Elimelech, and was simply a link in the chain of descent, which by a legal fiction, thus became unbroken.

When Ruth had a son, they called him Obed. It will be seen, therefore, that the name was of no importance, but this Obed, although he was the son of Boaz and Ruth, was considered as the son of the dead Mahlon or of Elimelech and continued the line of Elimelech, although he had none of the blood. This

was the reason the neighbors said, "there is a son born to Naomi."

When the Goël refused to redeem the land after he discovered that he would have to marry Ruth, he excused himself, saying, "lest I mar mine own inheritance." This may be taken to mean that other property which he owned would have to bear the burden of improvement and maintenance of the particular piece of land that came to him through this marriage, because it had to be preserved for his son, who would, in the eye of the law, be the son of the dead Mahlon; nor would this estate of inheritance descend to any other children that he might have, but was entailed upon the heirs of the body of Ruth.

The record then goes on to say, "Now this was the custom in former time in Israel concerning redeeming and concerning changing, to confirm all things; a man drew off his shoe and gave it to his neighbor, and this was a testimony in Israel; so the Goël said to Boaz, Buy it for thyself, and he drew off his shoe." The shoe was the symbol of possession, and the foot planted upon the ground was the evidence

of ownership; thus the shoe or sandal became the symbol of ownership and title, and the handing of the shoe from one to the other was evidence of a transfer of a right or title. In this case, the Goël who renounced his right to redeem in favor of Boaz, the next in succession, handed the latter his shoe as evidence of his transfer of the right of redemption. Boaz, having obtained the right of redemption through the renunciation of the nearest kinsman, made a public statement in the presence of the elders summarizing his rights, such a statement being necessary in the absence of written records of the transaction; "And Boaz said unto the elders and unto all the people, Ye are witnesses this day that I have bought all that was Elimelech's, and all that was Chilion's and Mahlon's from the hand of Naomi." There could be no doubt as to his title, and the fact that it was the family estate rather than the estate of the individual that was now being transferred is indicated by the mentioning of the names of the father and the sons. There was something in the Jewish idea of the family estate as distinguished from

the rights of its possessor, akin to the modern notion of the relation of a corporation to its members. The family estate was an entity separate and apart from the line of individuals who succeeded each other in its possession. Like the corporation, the family estate did not die, and to prevent the possibility of the extinction of the family, a legal fiction was called into requisition, as in this case, whereby the son of the widow of the last occupant of the estate was looked upon as though he were of the blood of the last occupant; thus the owner of the land, for the time being, was merely the legal representative of the estate which would continue after his death.

We might, to carry still further the analogy between the Jewish notion of the estate and the modern corporation, consider the owner of the estate like the president of the corporation—its representative clothed with certain powers over it, but unable practically to do anything whereby the estate would be minimized or lost to the family.

Boaz went on addressing the elders as follows: "Moreover, Ruth the Moabitess, the wife of Mahlon,

I have purchased to be my wife, to raise up the name of the dead upon his inheritance, that the name of the dead be not cut off from among his brethren and from the gate of his place. Ye are witnesses this day; and all the people that were in the gate and the elders said, We are witnesses."

Now, this was a lawful marriage, and required no further ceremony. The wife went with the estate, and indeed, in a measure, transmitted the estate because her son would inherit it; her son would represent her former husband's family, and would take his place as one of the heads of the families of the town "in the gate of his place."

The right and duty of the nearest kinsman to marry the widow and raise up the name of the dead upon his inheritance was, in later times, limited, and only the actual brother of the dead man was obliged to marry the widow. Contemporaneously with this change, came a change in the custom of drawing off the shoe as evidence of title and ownership. As stated in this record, "This was the custom in former times in Israel," but in later times, the

custom of drawing off the shoe was limited exclusively to the one case mentioned in the twenty-fifth chapter of Deuteronomy; namely, where the brother of the dead man refuses to marry the widow, she plucks off his shoe in the presence of the elders, spits out before him and says, "Thus shall be done to the man who will not build up his brother's house; and his name was known in Israel as the house of him whose shoe was plucked off." Thus what was originally a general symbol of title, in the course of time was modified, and eventually lost its significance as such altogether, and became a symbol of contempt; and that which was originally a general custom used in all cases, came in the course of time to be limited to a single case in which the actors changed places. It was no longer he who transferred the title that plucked off his shoe and gave it to his neighbor, but it was the rejected woman who, in token of her contempt for the man who refused to marry her, plucked off his shoe. In the case of Boaz and Ruth we find the custom of plucking off the shoe in its ancient primitive form, and in the other case, in Deuteron-

omy, it has become modified and changed in the course of centuries, until hardly recognizable as the same custom. It is an interesting illustration of the manner in which customs are changed in the course of long periods of time; it is only when we compare the two extremes that we notice the remarkable changes that have taken place.

THE CASE OF ADONIJAH, ABIATHAR AND JOAB.

1 *Kings* I, 5–II, 34.

Several times during the beginning of the reign of King Solomon the question of the privilege of sanctuary came up for decision. This privilege or right was successively claimed by Adonijah, the king's brother; Abiathar, the high priest, and Joab, one of the mighty men of King David, and sometime commander-in-chief of the army. The right of sanctuary claimed by these men is one of the most ancient legal institutions recorded in the Bible. It arose with the very beginning of a belief in supernatural powers, to whom it was a direct appeal for protection. Every place that had been consecrated by the supposed presence of God, or that had been used as a place of worship, was sacro-sanct; and violence committed in it was not merely an offence against the person injured or against established law or custom, but was likewise an insult to the Deity. Hence, in

very earliest times, the sacred places became places of refuge for those who were pursued and in danger of their lives; and so great was the reverence and fear inspired by the supernatural, that this appeal for Divine protection was regarded as tantamount to obtaining that protection, and kept the avenging pursuer at a distance.

It appears that when King David had grown old and was about to die, one of his sons, Adonijah, apparently with the consent of the king, "exalted himself, saying, I will reign," and he appeared before the people with chariots and horsemen, and generally conducted himself not merely as heir-apparent, but as though he were already king. He conferred with Joab, the king's commander-in-chief, and Abiathar, the high priest, both of them devoted to King David, and they "following Adonijah, helped him" (1 Kings I, 5, etc.). By a palace intrigue, Bath-Sheba, assisted by Nathan, the prophet, managed to obtain the old king's favor for her son Solomon, and under their influence King David directed that Solomon should be anointed and proclaimed king over Israel (1 Kings I, 32–34).

When Adonijah, who had been entertaining the princes and the king's officers, heard that the crown had been given to Solomon he feared that Solomon would put him to death, the favorite method employed by oriental potentates for disposing of dangerous rivals, especially members of their own family, who by virtue of their blood relationship might pretend to a right to the throne. Adonijah sought refuge in the tent of the tabernacle where the Ark of the Covenant was resting and where the altar of God stood, and laying hold of the horns of the altar, he announced that he would not leave the place until Solomon swore that he would not put him to death. Although Solomon respected this appeal to the privilege of the sanctuary, he declined to comply entirely with Adonijah's request, merely saying, "If he will show himself a worthy man, there shall not a hair of him fall to the earth; but if wickedness shall be found in him, he shall die." Adonijah understood this to mean that if Solomon came to the conclusion that Adonijah was a dangerous man, he would put him to death, and he refused to leave the sacred premises.

Solomon then sent for him and "they brought him down from the altar" (1 Kings I, 50–53)—removed him by force.

Thereafter, King David died and Solomon sat on the throne of his father. After the death of the old king, Adonijah was guilty of a diplomatic blunder that cost him his life. In an interview with Bath-Sheba, the mother of King Solomon, he obtained from her a promise to ask the king to give him as wife Abishag, the Shunammite girl, who had waited upon King David during his last days. Had Solomon complied with this request, the people would have seen in this marriage a confirmation of the claims of Adonijah to succeed King David. It was customary for the successor of a deceased king, as evidence *inter alia* of his right to succeed to the sovereignty, to take possession of the harem.

Solomon immediately saw the political bearing of this request, and he said to his mother, "And why dost thou ask Abishag the Shunammite for Adonijah? Ask for him the kingdom also, for he is mine elder brother" (1 Kings II, 22); whereupon Solomon had

Adonijah put to death on the same day, and fearing the power of Abiathar and Joab, who had encouraged Adonijah in his pretensions, he determined to rid himself of them also. The priest he could not kill, since the fact that he ministered at the altar and bore the Ark of the Lord on his shoulder invested his very person with a certain sacredness which the king felt bound to respect. Abiathar, therefore, was banished from the court and the capitol (1 Kings II, 26–27).

Then came Joab's turn. When Joab heard of these occurrences, he fled into the tabernacle of the Lord, and caught hold of the horns of the altar. But Solomon's fear of Joab's influence over the army overcame his fear of the Lord, and he gave orders to have Joab killed even at the altar. The situation is almost paralleled by the story of Henry II of England and Thomas A'Becket. The king's officer, who had gone down to the tabernacle to execute the commands of his royal master, was afraid to do as the king commanded, because of the sacrilege involved, and he therefore sought to induce Joab to come forth, but Joab said to him, "Nay, I will die here."

Rather than kill Joab by the side of the altar, the officer returned to the king and reported what had occurred, and the king, feeling that it was not only necessary that he should justify himself, but also satisfy the scruples of his officers, gave reasons for his command. The true reason was the political one of Joab's participation in Adonijah's usurpation, a reason not strong enough, however, to destroy Joab's right of sanctuary. After the king's officer had reported to him that Joab had said "I will die here," the king said unto him, "Do as he hath said and put him to death and bury him, that thou mayest take away the innocent blood which Joab shed, from me and from the house of my father. And the Lord shall return his blood upon his own head, who fell upon two men more righteous and better than he, and slew them with a sword, my father David not knowing thereof, Abner, the son of Ner, captain of the host of Israel, and Amasa, the son of Jether, captain of the host of Judah. Their blood shall therefore return upon the head of Joab and upon the head of his seed forever; but upon David and his

seed and upon his house, and upon his throne, shall there be peace forever from the Lord." (1 Kings II, 31–33.)

By this piece of hypocrisy the king sought to justify his command to kill Joab and to disregard the right of sanctuary, for it was the law that this privilege of sanctuary could not be claimed by a willful murderer. This explanation satisfied the king's officer, and he thereupon returned to the tabernacle and killed Joab by the altar. Solomon was a despot, and it was not at all necessary for him to give reasons for his commands to his subordinates; but the terrible nature of the command, which was apparently a defiance of God and a violation of his sanctuary, required some justification.

The sanctity of the altar or the temple, or any other sacred place, is historically connected with the sacredness of guest-friendship. Anciently every man's house was a temple, the threshold of which was a sacred place at which the family gods were worshipped, and the family sacrifices made; and the head of every family was a priest. Persons who

crossed the threshold became, for the time being, members of the family, and were entitled to all its rights and privileges. It was the sacred duty of every member of the family to defend and protect every other one. The stranger who crossed the threshold, by a legal fiction having become invested with the family rights, had to be protected by the members of the family against any persons pursuing him. Thus, Lot protected two men who had come into his house and had partaken of his hospitality; and he even permitted his house to be besieged by the men of Sodom rather than give up the strangers to their vengeance (Genesis XIX, 4–11). Similarly the citizen of Gibeah protected the two strangers from his townsmen, because he had lodged and fed them in his house (Judges XIX, 22–23). Rahab protected the two spies sent out by Joshua to the city of Jericho. When the king of Jericho heard that these men were lodged at her house, he directed her to produce them; but she concealed them in her house and gave them the protection that guest-friendship required (Joshua II, 1–7).

When, in the course of time, the union of various patriarchal families resulted in the formation of tribal organization, and in addition to the sacred thresholds and altars of every man's house, public places of worship were recognized, the same sacred character was conferred upon them. The man who took refuge in the house of God, which was really the tribal house, was, in the eye of the law, invested with certain rights which it was the duty of the entire tribe to guard. Hence, merely crossing the threshold of sacred places, and especially, standing by the side of the sacred altar or laying hold of the horns of the altar was sufficient to insure immunity, even though there were no physical barriers to prevent the seizure and punishment of the suppliant at the sanctuary. But the peace of the community was threatened by the privileges thus claimed and allowed, inasmuch as any man might commit a murder, safe in the assurance that he would be protected merely by taking refuge in some sacred place. Hence, we find in the oldest collection of laws in the Bible this proviso: "He that smiteth a man so

that he die, shall be surely put to death; and if a man lie not in wait, but God deliver him into his hand, then he will appoint a place whither he shall flee; but if a man come presumptuously upon his neighbor to slay him with guile, thou shalt take him from mine altar that he may die" (Exodus XXI, 12–14). Thus the willful murderer was deprived of the benefit of sanctuary, and it was limited to protect the man-slayer from the hand of the avenging kinsman only if the murder was not committed "presumptuously or by lying in wait." In other words, no immunity was granted to him who had been guilty of "murder in the first degree."

The Cities of Refuge were simply an extension of the right of sanctuary, from a specific sacred place to an entire city. The sacred character of these cities is indicated by the fact that they were Levitical cities. The notion of the inviolability of the refugee, as soon as he crossed the boundary of the city and entered its gate, is an extension of the old notion of the sacredness of the threshold and the duties of guest-friendship to the stranger who passed over it.

The reason for Solomon's action in the case of Adonijah, Abiathar and Joab can readily be distinguished. The only legal justification for his refusal to recognize the right of sanctuary is given in Joab's case; to wit, the charge that Joab had been guilty of willful murder, and therefore had deprived himself of the right of sanctuary. In Adonijah's case, Solomon was obliged to make him a promise of partial immunity, but this promise is couched in such terms that shortly thereafter the king was enabled to use Adonijah's diplomatic folly as a pretext for putting him to death. In Abiathar's case, the sacredness of the office of high priest amply protected him from the king's vengeance, and Solomon was obliged to content himself with the deposition of Abiathar from his high office, and his exile to his patrimonial estate.

The juridical or legal character of the sanctuary is attested by many biblical citations. The ark of testimony containing the tables of the law was kept in the sanctuary (Exodus XXXIX, 35), and was placed in charge of the priests (Deuteronomy XXXI, 9). It was to the altar that men went for the pur-

pose of having an oath administered to them (2 Chronicles VI, 22). So closely connected were the notions of sanctuary and administration of justice that the judges were known as Elohim [Hebrew: God], and a case, therefore, was said to go before Elohim—that is to say, before the judges who represented God and who spoke judgment in his name.

At Common Law in England, the privilege of sanctuary survived until it was abolished by the statute, 21st James I, chapter twenty-eight, paragraph seven. It may be that the exemption from civil arrest enjoyed in our own times by parties, witnesses, attorneys, judges, jurors and officers of the court, while attending court, and while going to and returning from court, is a survival of the right of sanctuary, though a different reason is now given for it.

THE JUDGMENT OF SOLOMON.

1 *Kings* III, 16–28.

The wisdom of Solomon is the theme of writers of the three great religions which sprung from Judea. In legend and story he has been extolled as the wisest of men, whose insight into the mysteries of life transcended that of all other men; whose great practical sagacity made him the wonder of the world. Of the many stories concerning his wisdom there is one recorded in the Bible, which may or may not have had a foundation in some actual occurrence, but which in its recorded form must certainly be classed with the legends. It presents Solomon, in the exercise of his judicial function, as an oriental potentate, dispensing justice to all comers, in the great Hall of Justice. The narrative is the record of the decision of an Eastern judge, whose judgment was rendered after the peculiar manner of primitive tribunals, which have not as yet established a system of law, but which depend upon the inspiration of the mo-

ment. Under the law, as codified in the Pentateuch, such a proceeding would have been impossible, but to the irresponsible king all things are possible; his will is the law, and his sense of justice is his people's jurisprudence. In the biblical story of Solomon's judgment the legendary elements are intertwined with many interesting suggestions of the procedure in such royal oriental courts of law, and it is curious to note that many of the points of procedure that may be found stated either expressly or by inference in the account of the judgment of Solomon, find confirmation in the opinions of the Talmudists.

The king was seated on the judgment seat in his great hall, when two women that were harlots entered and stood before him. "The one woman said, Oh, my lord, I and this woman dwell in one house and I gave birth to a child with her in the house, and on the third day that I was delivered this woman was delivered also, and we were together, no stranger was with us in the house, save we two alone. And the child of this woman died in the night for she overlaid it, and she arose at midnight and took my child

from me and she laid it in her bosom, and her child, the dead one, she laid in my bosom. And when I arose in the morning to give suck to my child, behold, he was dead, but when I had considered it in the morning, behold, it was not my son which I did bear."

Then said the other woman, "Nay, for my son is the living one and thy son is the dead." And this one said, "Nay, for thy son is the dead one and my son is the living." Thus they spoke before the king.

Upon this state of facts the king was asked to render judgment—a test worthy of his wisdom. Here was the statement of one against the statement of the other, no witnesses being produced by either side, no husband, friend or relative to add to the weight of the testimony of either of the parties. The legend states the fact in such a manner as to preclude any judgment based upon ordinary methods of investigation, and requiring the exercise of extraordinary sagacity to discover the truth. It may be, that by cross-examination Solomon might have confounded the liar and brought out the truth, and it

may be presumed that he was a cross-examiner *par excellence,* but this method would not have satisfied the exigencies of the legend. What would have delighted a lawyer would have bored a layman and legends do not spring up among lawyers. The popular imagination does not follow the intricacies of close reasoning, nor has it the patience to unravel painfully the thread of a fine spun argument. It delights in swift and sudden changes of situation and in a sensational cutting of the Gordian knot. In the popular mind, the great judge is he whose methods are direct, swift and striking.

The king having heard the statements of the women, fell a thinking about the case and repeated their words. This one says, "My son is the living and thy son the dead"; and that one says, "Nay, thy son is the dead and mine the living." Some Bible commentators find the clue to the judgment in the manner in which the women made these statements. The false woman, whose object was to retain possession of the living child, shows it in her eagerness to claim him, saying, "Mine is the living and

thine the dead." It is the living child, the one she has in her possession, that she emphatically names first, whereas the true mother, who has the dead child thrust on her, says, "Nay, thine is the dead child and mine is the living." She desires to be rid of the dead child and regain possession of her own child. The value of this suggestion is left to psychologists; it could hardly have been the means of giving light in so difficult a case. But whether this was the clue or not, the king, after having repeated these words of the women, suddenly cried out, "Fetch me a sword."

His repetition of the pleas before proceeding to judgment is approved by the Talmudists, who made it a rule that the judge, before rendering judgment, must publicly state the case of both sides, very much in the manner in which a judge sums up to the jury. On the other hand, his abrupt call for a sword is severely condemned by some Talmudists as an act unworthy of a judge, who sought by illegal means to frighten the parties and who, had his sentence of judgment been carried out, might have caused the

death of an innocent child. It must be remembered that the Talmudists who lived under a highly developed system of jurisprudence, which compelled judges to follow an orderly and well regulated system of procedure, could not countenance the capricious methods of an irresponsible judge, even though he were the king. Hence Rabbi Judah, a great master of the law, and the compiler of the great code known as the Mishnah, said, "If I had been present when he said, 'Fetch me a sword,' I would have put a rope around his neck, for if God had not been merciful and prompted the mother to give up her child rather than see it die, it would surely have been killed by him." Evidently the ancient methods of procedure found little favor in the eyes of Rabbi Judah. In fact the Talmudists were rather impatient of the primitive methods of the biblical law, even of the law of Moses, and they sought under the influence of more refined theories of law and procedure to modify the severity of the ancient Mosaic law, even going so far as to abrogate it entirely when it was found to be out of harmony with the conditions and requirements of a later stage of civilization.

When the king cried out "Fetch me a sword," he was probably eyeing the two women and noting the effect of his order. At this point, one might suppose that the false woman would have shown signs of terror and could easily, by a question or two, have been made to confess her fault. But, no, the legend is not satisfied with such proof of Solomon's wisdom; as yet there is no climax to the wrought up feelings of the popular mind. And now comes the climax in all its magnificence. Imagine the Eastern professional story teller telling this tale and gradually working up to the words, "Cut the living child in two, and give one-half to the one, and one-half to the other." The death of the child is to be the touchstone by which to discover the mother. Josephus, in his account of this scene, makes the king order both the living and dead child to be divided, so that absolute equity shall be observed in the division. The story would have had a sad ending if the mother had fainted when the sword was produced, and the sentence had been carried out. However, the story teller will not leave us in the lurch. It is his purpose to

show that Solomon was wise, and he may be safely trusted to get over the difficult places.

The king's threat had the desired effect, for the mother of the living child cried out, "Oh my lord, give her the living child and do not kill it," but the other woman said, "Let it be neither mine nor thine; divide it." Now what possessed the woman to make such a statement? What reason was there for her demand that the child should be killed. How lame and impotent a conclusion to her case, which, up to this time, she had conducted with so much pertinacity, boldness and skill. She had stolen the living child from its mother, presumably because she wanted it; she had resisted the mother's demands for it, presumably because she wanted to keep it; she had even compelled the mother to go before the king himself to get her child, and there in the royal presence she had thus far, under great stress, maintained her right of possession, and now at the very moment of her triumph, when the mother publicly relinquished her rights and acquiesced in her possession, she not only declines to take it, but insists upon its destruction.

What can be the reason for such unreasonableness?

Let us suppose that after the mother had said, "Give her the living child but do not kill it," the false woman had said nothing. Solomon would have been compelled to give the child to the wrong woman and a good story would have been spoiled, because there would have been no way of determining whether the true mother or the false claimant was the one who said, "Give her the living child but do not kill it." This might as well have been said by the mother who was in terror lest her child be killed, as by the false woman who was seized with remorse at the last moment and prayed that the child might not be killed. Now the reason for the remarkable statement of the false woman appears. The legend had to add these words in order to make it clear to the popular mind that the woman who wanted to save the child was indeed the true mother, by contrasting with her words those of the false woman who was thus made base even to fiendishness. And thus the famous words of Solomon, "Fetch me a sword," are justified and virtue is triumphant, for the king said, "Give her the living child, and do not kill it; she is its mother."

The judgment of Solomon may be based on fact, but it is presented in the form of a legend such as the people love to tell about their great men. Here the king sits in all the pomp and glory of royalty, exercising the most important office, that of the judge, and doing justice, not according to the methods of the tiresome lawyers, who talk and reason and quibble, and whom the popular mind has at all times condemned, but in the manner of the noble prince, with royal dignity, with worldly wisdom and with swift hand.

THE CASE OF NABOTH'S VINEYARD.

1 *Kings* XXI, 1–29; 2 *Kings* IX, 22–26.

This case has been made famous on account of the magnificent dramatic effect with which it is told in the Bible, and more especially because of the manner in which the Divine wrath took vengeance upon the son of King Ahab for the crime committed by the father, illustrating by a shining example the words, "For I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children, unto the third and fourth generation of them that hate me." But apart from the dramatic and literary interest of this story, and its value as an illustration of certain ethical principles, it has many interesting legal elements.

Naboth, a wealthy landowner in northern Palestine, and one of the leading men of the city of Jezreel, owned a vineyard next to the grounds surrounding the summer palace of Ahab, king of Samaria. The king, on one of his visits to his summer palace, cast

a covetous eye on the vineyard of Naboth, and, having sent for him, said, "Give me thy vineyard that I may have it for a garden of herbs, because it is near unto my house, and I will give thee for it a better vineyard than it, or, if it seem good to thee, I will give thee the worth of it in money." This proposition, fair enough, judged from a modern point of view, was not so pleasing to Naboth, whose natural attachment to his patrimonial estate was strengthened by the immemorial custom among the Hebrews, of preserving the estate in the family, unless dire necessity required its alienation.

Originally lands were entirely inalienable, but with the growth of commercial life under the reign of the kings, concessions were gradually made in favor of the alienation of landed property, with a proviso, however, that in the year of the jubilee all lands were to revert to the family of the owner who had aliened them. To men like Naboth, who had no reason for parting with their estates, the very thought of giving away or selling them was akin to sacrilege, and thus Naboth answered the king, "It is forbidden

me by the Lord that I should give the inheritance of my fathers unto thee." As the kingship was still something new in Israel and the ancient liberties of the people had not yet been entirely destroyed by the monarchial rule, he had to be satisfied with this answer.

When he returned to his capitol, however, he showed such marked signs of displeasure at the treatment he had received from Naboth, that his wife, Queen Jezebel, whose name has since become a synonym for deviltry, asked him, "Why is thy spirit so sad that thou eatest no bread?" Thereupon the king told her the story, quoting Naboth as saying, "I will not give thee my vineyard."

Jezebel, who, as the daughter of a despotic Phoenician king, the king of Sidon, had been brought up in her father's house to look upon the mere whim and caprice of the king as higher and stronger than any law or custom, lost patience at her husband's meek recital of Naboth's refusal of his request. With bitter irony, she said to him, "Dost thou now indeed reign over Israel?" adding, "Arise and eat and let

thy heart be merry, for I will give thee the vineyard of Naboth, the Jezreelite."

The manner in which she kept her promise showed how deep were the inroads which royal usurpation had made upon the liberties of the people. It must be premised that under the ancient constitution of the Hebrew Commonwealth each community was practically independent and was ruled by its own elders. With the establishment of the kingship, new officials appear, namely, the royal judges who sit with the elders in the various cities of the kingdom. As the kingship grew stronger, the autonomy of the elders declined. By force of intrigue their authority was undermined, and, as in the present case, corrupt men were put into office under royal influence, who became pliant tools in the hand of their royal masters.

The queen evidently knew upon whom she could rely to carry out her purpose, for she issued orders in the name of the king and sealed them with his seal, and sent them to the elders and princes who were in Naboth's city and who sat with him in the local council. It is not to be presumed that she issued these

writs or orders to all the elders indiscriminately. She probably had several men in office in the town of Jezreel upon whom she could rely to carry out her orders. She wrote to them as follows:

"Proclaim a fast and place Naboth in the assembly of the people and let him be confronted with two worthless fellows that they may testify against him, saying, 'Thou didst blaspheme God and the king,' and then let him be taken out to the place of execution and be stoned to death."

The order to place Naboth in the assembly was in fact an order to place him on trial by his peers, the members of the council of elders who "sat with him." Her order to have witnesses suborned to perjure themselves, and the fact that her orders were carried out to the letter, throw a clear light upon the administration of the law under a despotic ruler. It is probable that in her secret instructions to her tools she told them what Naboth had actually said to the king, and how this might be perverted into blasphemy and *lèse-majesté.*

Violent as was this debauchery of justice by the

queen, it was, however, done according to strict form of law, for the royal power in Israel was not yet strong enough to violate all popular traditions and forms of procedure, and accomplish its ends by arbitrary measures.

When the elders of Jezreel had received their orders from the queen, they proceeded to carry them out to the letter. They gathered the assembly and placed Naboth on trial, produced the perjured witnesses, who testified against Naboth in accordance with her instructions, "Naboth has blasphemed God and the king," and thereupon he was convicted and taken to the common place of execution, without the city, and stoned to death.

The elders in the case contented themselves with following the mere form of procedure, and disregarded all the rules of practice which the Jewish law had established for the protection of one charged with crime. In this case the examination of the witnesses seems to have been perfunctory and intended merely to satisfy the multitude of onlookers and townsmen of Naboth.

The judicial murderers having executed the queen's writ, made their return in due form, to wit, "Naboth is stoned and is dead."

When the queen received this message, she said to Ahab, "Arise and take possession of the vineyard of Naboth, the Jezreelite, which he refused to give thee for money, for Naboth is not alive but is dead," and Ahab went down to Jezreel for the purpose of taking possession of the coveted land.

The question arises, By what right did the king take possession of the land upon the death of its owner? If Naboth had children, they would inherit; in the absence of children his nearest kinsmen would inherit, so that the inheritance of his fathers would not pass out of his family or tribe. There evidently were several versions of this affair current among the people, for in the passage in Second Kings (IX, 26) there is a reference to the fact that Naboth did have sons who also fell victims to the covetousness of the king.

It was the law, anciently, that the children were put to death for the crime of the parent, until the

promulgation of the law "The parents shall not be put to death for the children, and the children shall not be put to death for the parents; each man shall be put to death for his own crime." (Deuteronomy XXIV, 16.) As Naboth had been convicted and sentenced to death, his children suffered the same punishment.

As to the right of the king to take possession of the inheritance, this may have been founded either upon his kinship with Naboth or upon his right as *ultimus haeres* in default of lawful heirs, but there is nothing in the Jewish law to warrant the belief that the King or the State had any right to inherit property upon the death of the owner without lawful heirs, nor is there any evidence of forfeiture of the estate of the felon who has been convicted and put to death. We must, therefore, assume that the king's possession of Naboth's vineyard was simply the act of an autocratic despot. No doubt, Ahab himself would never have dared to take such a step in violation of the ancient custom and laws of his people, but Jezebel, whose character and training had left in her no con-

scientious scruples on this score, did not hesitate to establish a new precedent for the crown.

Although the people were, for the time being, placated by the apparent regularity in the form of the trial of Naboth, they perceived the motive for the prosecution as soon as the king took possession of Naboth's estate. The biblical account introduces the prophet Elijah talking with Ahab on the highway and denouncing the crime and threatening him with divine vengeance. "Thus saith the Lord, Hast thou killed and also taken possession? In the place where dogs lick the blood of Naboth, shall dogs lick thy blood, even thine." Ahab, overcome with contrition, humbled himself and did penance for the crime, and the prophet was then informed that not in Ahab's day would vengeance be taken, "but in his son's days, would the evil be brought upon his house"; and later on (2 Kings IX, 25–35), when his son, King Jehoram, was slain by Jehu, his body was thrown into the field of Naboth, the Jezreelite. "For," said Jehu to his companion, "I remember how that when I and thou were riding together, after

Ahab his father, the Lord laid this burden upon him. 'Surely I have seen this day the blood of Naboth and the blood of his sons,' saith the Lord, 'and I will requite thee in this very plat of ground.' ''

The words here put into the mouth of the prophet Elijah, threatening Divine vengeance for Ahab's crime, probably expressed the indignation of the people at the enormity of the offense, and at the prostitution of justice by the king and queen. It was such unlawful assumption of authority on the part of the kings that prevented the monarchy from flourishing in Israel. The old customs and laws which had been temporarily placed in abeyance during the reign of the kings were revived immediately upon the fall of the kingdom, and after the return of the Israelites from the Babylonian captivity, and still later, after the destruction of the second temple by Titus, the reign of law revived and reëstablished itself among the Jewish people.

A CONVEYANCE OF LAND TO THE PROPHET JEREMIAH.

Jeremiah XXXII, 6–15.

The purchase of the Cave of Machpelah, illustrates the method of conveying land before the introduction of written records. The conveyance to Jeremiah shows the method followed during the last days of the Jewish kingdom, at the beginning of the sixth century before the Christian era. At this time the art of writing seems to have been generally practiced, and accordingly the form of procedure which was in vogue during the earlier period was modified. The procedure under consideration shows distinct traces of the influence of Babylonian law, more especially in the duplication of the deed of conveyance and in the manner in which it was placed on record.

For the purpose of better understanding the reason for the introduction of this fragment of ancient law into the book of the prophet Jeremiah, it must be borne in mind that the doom of Judea was impend-

ing. The king of Babylon had entered the land, had deposed the king of Judea and had placed his uncle, Zedekiah on the throne. Babylonian soldiers, tax gatherers and other officials appeared in all parts of the land, and wise statesmen foresaw the end of Jewish independence. Among these farseeing men was Jeremiah, a man of noble descent, of priestly lineage and of commanding position in the state, who had been thrown into prison by King Zedekiah because he had foretold the political destruction of the Jewish state. Jeremiah's influence upon the people was very great, and now that he had accomplished his purpose in opening their eyes to the true condition of affairs and impressing them with the fact that the state was in its decline, he sought to console them with the thought that although the present state was doomed, a new state would be established upon its ruins.

For this purpose he used the incident about to be described, as a symbol of the reëstablishment of the state. The point lay in the fact that he, Jeremiah, although then in prison because of his prophecy of the destruction of the state, nevertheless, by taking

a deed of conveyance of land, manifested his belief in the fact that the state would be reëstablished, that houses and fields would yet again be bought, and that the people would be brought back out of their captivity. Readers of Roman history will recall a singular event recorded by Livy (Book XXVI, chapter XI), which indicated faith in the ultimate supremacy of the Roman arms equal to Jeremiah's faith in the ultimate return of the people of Israel to their ancient habitations. Livy records the fact that when Hannibal was approaching Rome, he was startled by the information obtained from a Roman prisoner, that the ground on which his army was then camping, had been sold at Rome and that the price had not fallen.

While Jeremiah was in the court of the prison, his kinsman, Hanamel, came to him and said, "I pray thee, buy my field that is in Anathoth, which is in the land of Benjamin, for to thee belongs the right of inheritance, and to thee belongs the redemption, therefore buy it for thyself." When a man desired to dispose of his inheritance, it was the right of his

nearest kinsman to purchase it, and only after the kinsmen, in the order of precedence, had waived their right were strangers permitted to acquire it. This right is spoken of as to the right of inheritance and the right of redemption. Jeremiah as the nearest kinsman of Hanamel, exercised his right to purchase the field. The formalities consisted in weighing the purchase money, delivering it to the seller, preparing, sealing and attesting the deed of conveyance, and placing the deed on record. Jeremiah thus describes the proceeding: "I bought the field from Hanamel, my uncle's son that is in Anathoth, and I weighed out unto him the money, seventeen shekels of silver. And I wrote it in a deed and sealed it up and had it attested by witnesses, and I weighed the silver in the balance."

The entire transaction was public and all the details were performed in the presence of witnesses. The purchaser prepared the deed in duplicate, leaving one copy open and the other to be sealed. They were presented for inspection to the witnesses, who attested them by making their mark or by signing

their names. After the two deeds were inspected and attested, one was carefully sealed and deposited among the public records never to be opened unless the other was lost, tampered with or altered. It is possible to infer from the account of this conveyance that both deeds were placed on record, one of them, sealed, and the other patent for public inspection. If this is the manner in which the documents were recorded, it is similar to the practice which now prevails in the Registry of Wills. The original will is not open for public inspection, except under order of the court, whereas, a copy of it in the Will Book is open for the inspection of all the world. There is some evidence from recent discoveries in Babylonia that the latter method is the one alluded to in this case.

Babylonian explorers have found legal documents executed in duplicate on clay tablets, one of which was enclosed within the other. In other words, a tablet was first prepared and then a case was made for it, and on the outside of the case a copy of the enclosed tablet was inscribed; the case was then

sealed and both copies, one within the other, were filed away among the records. This method would account for Jeremiah's words, "And I took the deed of the purchase, both that which was sealed and that which was open, and I gave the deed of purchase unto Baruch, the son of Neriyah, in the presence of Hanamel, my kinsman; and in the presence of the witnesses who had signed the deed of purchase; and in the presence of all the Judeans who were sitting in the court of the prison." This public delivery of the document, thus thrice attested in the presence of the seller, the subscribing witnesses, and the witnesses standing round about, was accompanied by the following charge: "And I charged Baruch in their presence as follows, Take these deeds, this deed of purchase, both the sealed and the open deed and place them in an earthen vessel (on record) in order that they may last many days, for thus hath said the Lord of Hosts, the God of Israel, 'yet again shall there be bought houses, fields and vineyards in this land.' "

The earthen vessel was the receptacle in the record-

ing office in which the documents were preserved. The object of recording them was, as stated by Jeremiah, that they might last many days, for it was presumed by him that, even in the troublous times which were then impending, documents preserved in the public record office were safer than if they had remained in the possession of any individual. This was the lesson that Jeremiah sought to inculcate, that in spite of the approaching doom of the state, the ordinary affairs of life would continue as theretofore, and that eventually order would again be brought out of anarchy and a stable government be re-established.

This transaction took place in the court of the prison in the city of Jerusalem, and it is to be presumed that the record office to which allusion is made, was in the same city. Modern explorations in Jerusalem have not yet brought to light this public record office, and there can hardly be any doubt that, somewhere down in the sub-soil of the present city, there lie buried the record chambers of the ancient kingdom and commonwealth of the Jews, and it is to be

hoped that the day is not far distant when explorations may be made on Mount Zion which will yield invaluable treasure to the archeologist, the student of the Bible and the historian.

THE TRIAL OF JEREMIAH.

Jeremiah XXVI, 1–24.

In the trial of Naboth the forms of law were complied with in order to give an appearance of validity to what was in fact a mere mockery of justice. The details of the trial are not given; we are simply told that Naboth was put on trial and that two perjured witnesses were produced to charge him with blasphemy and high treason, and that he was convicted and stoned to death. The Court was composed of the Elders of his city and the princes, who were probably selected by the king to sit with them during the trial. In Jeremiah's case the constitution of the Court and the procedure followed are given with more particularity.

Jeremiah, whose life had been devoted to a long continued and vain endeavor to introduce reform into the official life of the Jewish kingdom, made a desperate attempt to rouse the Elders of the people to a realizing sense of the impending political doom

that his sagacity and statecraft foresaw. In this, as through his entire public activity, he stood forth as the avowed mouth-piece of God, never offering his advice merely upon its merits, but always as the word of God. Thus, it is recorded that in the beginning of the reign of Jehoiakim, the son of Josiah, who was one of the last kings of Judah, Jeremiah went out into the great court of the Temple at Jerusalem, at a time when there was some great convocation of the people of all the surrounding cities, and in the presence of all he pronounced this doom, "Thus hath said the Lord, If ye will not hearken unto me, to walk in my law, which I have set before you, to hearken unto the words of my servants the prophets, whom I send unto you, yea, making them rise up early and sending them, while ye have not hearkened; then will I render this house like Shiloh, and this city will I render a curse unto all the nations of the earth." This statement was made the basis of a charge against Jeremiah for which his prosecutors sought to have him put to death. His prosecutors were the priests and the prophets, who were present and heard him

speaking these words in the Temple court, and when he had finished speaking they seized him, saying, "Thou shalt surely die." A court was speedily assembled to try Jeremiah "and all the people assembled themselves about Jeremiah in the house of the Lord." The phrase "all the people" is a translation of Hebrew words which I believe to have a technical meaning equivalent to the word "court." It is well known that the High Court of Justice in Jerusalem sat in the Temple itself, and if its constitution was at all like that of the Sanhedrin in post-exilic days, it may be taken for granted that it consisted of select men of the people of high standing and ability. These men were joined by the princes of Judah, who, when they "heard these things, came up from the king's house" to the Temple and sat with the court at the entrance of the new gate of the Temple. The court was thus composed of select men of Jerusalem and the princes of Judah, who were either of royal blood or high officers of the crown. The burden of the charge against Jeremiah is found in the words with which his prosecutors addressed

him immediately after his arrest, "Why hast thou prophesied in the name of the Lord saying, Like Shiloh shall this house be and this city shall be ruined, without an inhabitant?"

From an examination of the words of Jeremiah and from a consideration of the general state of affairs at that time in the kingdom of Judah, it may fairly be presumed that it was something more than pious zeal that inflamed the priests and prophets against him. The priesthood, against which many of Jeremiah's fulminations were directed, was thoroughly corrupt, and the prophets were mere seekers for popularity who prophesied what they believed the people wished to hear. Jeremiah himself was of priestly lineage and a prophet, but distinguished among both these classes by his passion for righteousness. It is, therefore, probable that the priests and prophets were merely waiting for an opportunity to sieze upon some statement of Jeremiah for the purpose of putting an end to his prophetic ministry, and, therefore, distorted his words on this occasion into a blasphemous threat that both the house of the Lord

and the city of the king would be utterly destroyed. The crime, therefore, was both blasphemy and *lèse majesté,* and it is quite likely that it was only the sacredness of the Temple that prevented his enemies from inflaming the public against him to such an extent as to cause his instant death. Standing before the court, the priests and the prophets said, "This man has been guilty of a capital offense, for he hath prophesied against this city, as ye have heard with your own ears."

Jeremiah's defense was simple and bold; he frankly admitted the utterance of the words and boldly declared that they were spoken in the name of God, "The Lord hath sent me to prophesy against this Temple and against this city all the words that ye have heard. But now amend your ways and your doings and hearken to the voice of the Lord your God; and the Lord will bethink him of the evil he hath spoken against you. As for me, behold, I am in your hand; do with me as seemeth good and just in your eyes. But know ye for certain that if ye put me to death ye will surely place the guilt of innocent blood

upon yourselves and upon this city and upon its inhabitants, for in truth hath the Lord sent me unto you to speak in your ears all these words."

The "guilt of innocent blood" shed in any place rested not merely upon the head of him who committed the murder, but upon all of the inhabitants of that place. This is a survival of the old theory of blood guiltiness, whereby all the members of a man's household and family were responsible for his deed; a theory of law that was afterwards applied to the inhabitants of the town, even though they had no kinship with the murderer. In the Book of Deuteronomy (XXI, 1–9) an elaborate procedure is prescribed in cases where a dead body is found and the slayer unknown, and the Elders of the town, within whose limits the body is found, must make the atonement prescribed in this law in order to cleanse their community of the blood guilt which rests upon it.

Jeremiah's confession removed all possible dispute as to the facts of the case, and the question narrowed down to a single point: Did Jeremiah in fact speak in the name of God, as he professed, or was he one of

the false prophets concerning whom the law in Deuteronomy (XVIII, 20) provides, "But the prophet who may presume to speak a word in my name which I have not commanded him to speak, or who may speak in the name of other gods—even that prophet shall die." The test provided by the law in Deuteronomy could not be applied. "If thou shouldest say in thy heart, How shall we know the word which the Lord hath spoken? That which the prophet speaketh in the name of the Lord, and the thing do not happen and come not to pass—this is the word which the Lord hath not spoken." No sufficient time had elapsed to enable this test of Jeremiah's authority to be applied, hence it was a question for the court to determine from the evidence before it, whether Jeremiah was in fact a prophet of God or merely a blasphemer. Jeremiah's activity in the community was probably well known to the members of the court. His character and standing, both above reproach, spoke eloquently in his favor and it is quite likely that the character of his accusers was likewise well known to the court. But Jeremiah was not com-

pelled to rely merely upon his general standing in the community and his own protestation of innocence, for "There rose up certain men of the Elders of the land" and addressed the court as follows: "Micah the Morasthite prophesied in the days of Hezekiah king of Judah and said to all the people of Judah as follows: 'Thus hath said the Lord of hosts; Zion shall be plowed up like a field and Jerusalem shall become heaps of ruins and the Temple mount like the high places of the forest.' Did Hezekiah the king of Judah and all Judah attempt to put him to death? Behold, he did fear the Lord and besought the Lord and the Lord bethought him of the evil which he had spoken against them. And shall we bring a great wickedness on our souls?" These Elders probably were among those whose authority in the community had been diminished by the usurpation of the kings, and probably represented the old nobility of the land who sympathized with Jeremiah in his denunciation of a corrupt priesthood and an upstart prophetical school. In speaking on behalf of Jeremiah, these men neither based their argument upon Jeremiah's

character nor did they consider the principles of law involved in the case, but they forthwith produced a precedent, to wit, the case of Micah, who had made statements similar to those of Jeremiah, who had been tried before the king himself and been acquitted.

Another defender of Jeremiah is mentioned in the record, probably a man of great importance in the city and attached to the royal household. "The hand of Ahikam the son of Shaphan was with Jeremiah so as not to give him up into the hand of the people to put him to death." What arguments Ahikam used, if any, is not stated. It may be that his mere appearance for the defense had its influence with some of the "princes of Judah."

After the court heard the evidence and the arguments it pronounced the sentence of acquittal which is recorded in these words, "Then said the princes and the court unto the priests and to the prophets, This man has not been guilty of a capital crime, for in the name of the Lord our God hath he spoken unto us."

There is interpolated in this record the case of

Urijah, who prophesied during the reign of the same king, Jehoiakim, "against this city and against this land according to all the words of Jeremiah," evidently emboldened by the acquittal of the prophets Micah and Jeremiah of the charges of blasphemy and treason. But it appears that times had changed and that, notwithstanding the precedent established, the political condition of the kingdom of Judah, in the judgment of the king and his ministers, no longer warranted them in permitting such denunciation of authority. The authorities eventually came to the conclusion that for the peace of the city and of the crown an example must be made and, like all tyrants, they attempted to put down the truth by force. It must be remembered that these events occurred in the very last years of the kingdom of Judah. The king was at that time already paying tribute to Nebuchadnezzar, king of Babylon, and a few years thereafter the Babylonian armies overran Judea and carried off the king and many of his people into captivity. It, therefore, required men of the highest type of courage to speak the truth about the condi-

tion of the kingdom at that time. Urijah was one of these men. "And when King Jehoiakim and all his mighty men and all the princes heard his words the king sought to put him to death: but when Urijah heard it he was afraid and fled, and arrived in Egypt." Unfortunately for Urijah he had chosen a poor place for his refuge, for King Jehoiakim had been given the crown of Judah by the king of Egypt, who had made war upon Jehoiakim's brother and had deposed him. The king of Judah, therefore, owed his throne to the Egyptian king and was practically his vassal. Having heard that Urijah had taken refuge in Egypt he readily obtained his extradition. "King Jehoiakim sent some men into Egypt, . . . and they fetched Urijah out of Egypt and brought him unto King Jehoiakim who slew him with the sword and cast his dead body into the graves of the common people."

As events subsequently proved it had been better if the king had done justice to Urijah and given heed to the repeated warnings of gifted and honest seers concerning the administration of the affairs of the kingdom.

THE TRIAL OF JOB IN THE COURT OF HEAVEN.

Job I, 6–12, II, 1–7, XLII, 10.

The picture presented to us in the description of the Court of Heaven in the Book of Job leads us back to the days of a naïve but splendid mythology. The narrator describes the assembling of the court presided over by God himself. He attempts no description of the appearance of the court, but the imagination can readily supply the description omitted. The palace of the king with its lofty chambers and antechambers, monolithic columns supporting a massive roof, huge images of fabulous monsters, part men, part beast, guarding the entrances. "The white, green and blue hangings with cords of fine linen and purple on rollers of silver and pillars of marble; couches of gold and silver upon a pavement of green and white and yellow and black marble," the magnificence of the palace of Ahasuerus may well be transferred in imagination to the temple in the mind

of the author of the Book of Job, in which the Court of Heaven assembled. Or perhaps there floated before his mind some image of the palace which Solomon built for himself and which is described in its details in the seventh chapter of the First Book of Kings, and in it was "The porch for the throne where he might judge, the porch of judgment; and it was covered with cedar from one side of the floor to the other." The naïve anthropomorphism of the writer of the Book of Job pictures God himself sitting on the judgment seat in his great hall of judgment like the king in his royal palace awaiting the assembling of his family, his lords and their retinue. "Now there was a day when the sons of God came to present themselves before the Lord and the Satan (Accuser) also came among them." The sons of God are the mythical personages who, under the presidency of God himself, constitute the Court of Heaven, fashioned like the court of the king which was probably an outgrowth of the old tribal courts which met in more primitive times under the presidency of the tribal chieftain or patriarch. Among

the officers of this court was one named the Satan, who, in the rabbinical literature, is known as Satan the Accuser, and whose functions seem to have required him to perform duties similar to those of the chief of the detective police of the Russian empire. It was his duty to go about watching the people and noting their conduct and reporting thereon at the next session of the court. It was his duty, furthermore, to act as prosecutor and inquisitor, not only to note open breaches of the law, but even to question the honesty of honest men and to put them on the rack to test them. The entire atmosphere of this description of the trial of Job in the Court of Heaven is almost convincingly un-Jewish and in all probability a reflection of ideas prevailing in Babylonia, where a cult existed in which such strange beings as "sons of God" and Satan had their place. The court having assembled, God singled out the Accuser and asked for a report,

"And the Lord said unto the Accuser, Whence comest thou?"

"And the Accuser answered the Lord and said,

From roaming over the earth and from wandering through it."

"And the Lord said unto the Accuser, Hast thou directed thy attention toward my servant Job, for there is none like him on the earth. A man perfect and upright who feareth God and escheweth evil?"

"And the Accuser answered the Lord and said, Is it for naught that Job feareth God? Behold, thou hast indeed placed a fence about him and about his house and about all that he hath on every side. The work of his hands hast thou blessed and his cattle are far spread out in the land, but stretch only forth thy hand and touch all that he hath and see whether he will not renounce thee to thy face."

"And the Lord said unto the Accuser, Behold all that is his be in thy power, only against himself shalt thou not stretch forth thy hand."

And the Accuser went forth from the presence of the Lord.

The words of the Accuser exemplify the sincerity of bigotry. The honest man is not to be taken on faith, but his very honesty is suspected and his stead-

fastness is to be tested by persecution. In this ancient legend the Accuser, one of these splendid sons of God, stalks through the land testing the righteousness of men by inflicting pain. In a later age he reappears as a cowled white-faced stern inquisitor who, with rack and screw, seeks victims for the consuming wrath of the God of love.

Job is placed in the hands of the Accuser and suffers grievous pain and heartrending sorrow, not because of any wrong-doing, but as a test of his righteousness. In this legend, later ages found a precedent for the infliction of torture upon heretics, witches, political suspects and other persons under the ban of suspicion, and in the name of religion, and of law, inflicted those horrible punishments upon innocent persons which fortunately are now mere historical memories except, perhaps, in that great East European governmental system which continues to apply to its hapless subjects methods of administration and government, worthy of the darkness of the Middle Ages.

Job saw his cattle destroyed, his herdsmen en-

slaved, and his children buried in the ruins of their own house, and yet his piety rose triumphant, and Job "did not sin and attributed no injustice to God." "Again there was a day when the sons of God came to present themselves before the Lord and the Accuser also came in the midst of them to present himself before the Lord."

"Then said the Lord unto the Accuser, Whence comest thou now?"

"And the Accuser answered the Lord and said, From roaming over the earth and from wandering through it."

"And the Lord said unto the Accuser, Hast thou directed thy attention toward my servant Job, for there is none like him on the earth; a man perfect and upright who feareth God and escheweth evil and he is still holding fast to his integrity, and thou hast incited me against him to destroy him without cause."

"And the Accuser answered the Lord and said, Skin for skin, Yea, all that a man hath will he give for his life. But stretch forth thy hand and touch his bone and flesh and see whether he will not renounce thee to thy face."

"And the Lord said unto the Accuser, Behold, he is in thy hand; only take care of his life."

"Thereupon the Accuser went forth from the presence of the Lord and smote Job with a sore inflammation from the sole of his foot unto the crown of his head."

In spite of these additional sufferings Job continued to hold fast to his integrity, and the result of the trial showed that his steadfastness and his faith were unshaken. He would not renounce God, even though he believed himself to be unjustly punished by him. As a result of this steadfastness his trial ended in his complete rehabilitation.

"And the Lord received Job in favor, and the Lord brought back the captivity of Job. . . . And the Lord increased all that Job had had two-fold. . . . And the Lord blessed the latter end of Job more than his beginning."

Under all modern systems of law in which the presumption of innocence of the accused prevails, the possibility of such a trial has ceased. In the Talmudic Code, the rights of the accused were

guarded with such scrupulous care that conviction upon charges of high crimes was rendered almost impossible. The precedent established by this case of Job was never followed in the Jewish courts of law, and it was not until the period of the inquisition that the church harked back to this ancient legend, finding in it some shadow of an excuse for the introduction of that system of procedure which was the crowning disgrace of ecclesiastical organization and the horror of which has effectually prevented the reëstablishment of ecclesiastical dominion among civilized men.

JOB'S APPEAL FROM THE JUDGMENT OF GOD.

Although the Book of Job was written to point a moral and expound a certain view of sin and punishment, the author has cast it into a form which gives it a distinctively juridical character. Its language, moreover, is full of legal phrases, and figures and metaphors based upon proceedings in Courts of Law, and the subject matter of the debate is tossed from side to side in animated discussion and hammered out in the heat of forensic conflict.

What is the real subject of the argument and the theory upon which it is approached by each of the speakers? The prologue in heaven may be ignored for the present, because it introduces matters unknown to the real contending parties and, therefore, presents an element which does not enter into their argument. Let us take the facts of the case as actually known to Job and his friends.

Job lived in the land of Uz, and was a man perfect

and upright and one that feared God and eschewed evil. He had sons and daughters, was rich in cattle and possessed a very great household; and was known and honored as the greatest of all the children of the East. So pious was he that after his children had indulged in feasting it was his custom to sanctify them and to offer burnt offerings in their behalf, not only for any open sin that they might have committed, but also lest in their enjoyment and revelry they had renounced God in their hearts. Now it befell that suddenly on a certain day a series of frightful calamities overtook Job. Breathless messengers came running to his house in quick succession, telling him that robbers had killed his servants and had stolen his cattle; that his sheep had been burnt up by a fire from heaven; and, as a heart-rending climax, that his sons and daughters, who were eating and drinking in their eldest brother's house, were killed in its ruins, in the midst of a great wind storm from the wilderness. Upon receiving these tidings of woe, Job's simple faith asserted itself, and he fell down upon the ground and worshipped God, saying,

"The Lord gave, and the Lord hath taken away; Blessed be the name of the Lord." Before he had recovered from these misfortunes he himself was smitten with sore boils, from the sole of his foot unto his crown, and even as he sat among the ashes scraping himself with a potsherd, he said to his wife, in answer to her counsel that he renounce God and die, "Thou speakest as one of the foolish women speaketh. What, shall we receive good at the hand of God, and shall we not receive evil?" Here the author of the Book of Job adds, "In all this did not Job sin with his lips." According to the author, Job was probably already sinning in his heart. Job looked upon these misfortunes as a judgment of God; but he knew that he did not deserve them and that, therefore, the judgment of God must be at fault.

Now three great friends of Job—Eliphaz, Bildad and Zophar—visited him and when they saw him, sitting among the ashes, despoiled of his wealth, bereft of his children and foul with sores, they wept and mourned and sat down with him upon the ground for seven days and seven nights in silence,

each of them revolving in his mind the situation of affairs, and trying to account for it. Job, as well as his friends, had a theory, and the development of this theory and its application to the facts of Job's case form the important part of the entire book. What was this theory? It was, that Job's suffering was a punishment inflicted upon him in execution of a judgment of God, rendered against him because of some wrong doing of which he had been guilty. There was no doubt in their minds that Job's infliction was the result of divine judgment, and as God could not be conceived as unjust, the judgment must have been a just one; and, therefore, the friends of Job were constrained to assume that Job had been guilty of wrong doing. As a matter of fact, they knew that his whole life had been filled with good deeds; but whenever they were mentally confronted by the dilemma that God was unjust or that Job was a sinner, they chose the latter as the only possible alternative. On the other hand, Job likewise believed his sufferings to be the result of a judgment of God, but knowing that he was innocent of wrong doing,

he was driven to the conclusion that the judgment was unjust. Of course, neither Job nor his friends knew what the author of the book knew; namely, that the whole matter had been previously arranged in the High Court of Heaven, and that both Job and his friends were mere puppets in the hand of God.

Neither Job nor his friends were prepared to argue the case, and consequently their theories of the cause of his sufferings were not at first clearly thought out and expressed, but were developed and perfected in the course of the argument. For the purpose of the argument, therefore, we must assume, as Job and his friends did, that a judgment had been rendered against him—a judgment from which his sense of right and consciousness of innocence prompted him to appeal. The word "appeal" is not to be understood in the modern sense. Under our system of judicature, courts are subordinated to each other, and an appeal lies to a higher court from the judgment rendered in the lower court. At Jewish law there was no appeal from the judgment of a court of law, since the judgment was rendered in

the name of God. "Ye (judges) shall not be afraid of the face of man, for the judgment is of God" (Deuteronomy I, 17). Now, coming to the case of Job, the question arises, In what way could he appeal from the judgment of God? Only to God himself, who had rendered the judgment. But upon what ground could he appeal from the judgment of God? On the ground of its injustice. When Job measured this judgment of God by his standard of right, he boldly took the ground that it was an unjust judgment. Job, therefore, appealed from God to God.

The speeches of Job and his friends constitute an argument upon the justice of the supposed judgment and the infliction of punishment upon Job in the course of which the three friends of Job—Eliphaz, Bildad and Zophar—argue in behalf of the justice of the judgment of God. Toward the end of the argument a fourth speaker arises—Elihu—a sort of junior counsel, who also takes up the argument for the judgment. Job stands alone, *in propria persona* arguing his case with consummate ability and marvelous force, arguing against God himself. When it

is considered that, despite his conviction of the uselessness of any argument against God, the mere consciousness of his integrity emboldens him to present his case freely and openly, we cannot but admire the independence of thought which inspired him, and which must have been characteristic of the author of the book.

Job feels that his friends, from whom he expected comfort and consolation, have dealt deceitfully with him, in imputing to him wrong doing in the face of the fact, necessarily known to them, that he was innocent. Afraid to acknowledge his innocence and, thereby impugn the justice of God, they are prepared to sacrifice their friend, although they cannot bring proof of any guilt which would warrant such severe punishment. He has been tried by God and punished, although he has been given no hearing; he does not know the charge preferred against him, and has not been confronted by witnesses. If, then, his friends would successfully advocate the justice of God's judgment, he demands that they abandon mere rhetoric and present the facts upon which this judg-

ment is based. His friends have argued in behalf of the justice of this judgment by a specious plea based upon *a priori* reasoning, that because the judgment was rendered by God, therefore it must be just, one of them going so far as to invent facts for the purpose of proving his case. Job has demolished the rhetorical efforts of his adversaries, and standing conscious of his innocence, he denounces the judgment as unjust, and appeals from the judgment of God to God himself who rendered it, basing his appeal upon his ignorance of the charge against him and upon his absolute innocence of any wrong doing, and fortifying his plea by a solemn oath of purgation. This is the climax of his argument. He resorts to the means which the law allows to the hapless man in his condition, by a solemn oath before God, to protest his innocence and clear himself from guilt.

Is God just, or is Job just, and how shall we know? Only one can give the answer; and that is God himself, who is now introduced by the author of the book, addressing Job out of a whirlwind. And what is the answer that is given to the question? The ways of

God are past understanding. On reading this speech of God we are at once struck with the fact that he does not answer Job's righteous demand to know wherein he has sinned, nor does God seek to justify himself. In a series of unanswerable questions he overwhelms Job with evidence of his insignificance in the great scheme of creation, describing, in a series of marvelous word-pictures, the greatness and the mystery of the universe and, inferentially, of its Creator. Job is not convinced through his reason, but is overwhelmed by the sense of his littleness. He does not recant, but acknowledges the impossibility of comprehending the ways of God. The argument having been concluded, Job is still left under the impression that his sufferings are the result of a judgment of God, against which he no longer protests, although still steadfast in the belief of his innocence. The matter is too wonderful for him and too mysterious, and he bows before the power which he does not comprehend. But although Job has been silenced by awe of the Almighty, his appeal has not been in vain. God sustains his appeal because, although

based upon the erroneous theory that his sufferings were the result of a judgment, it was founded upon right and truth. He was innocent and his cause must prevail. He is told that the things which he had spoken of God were right, and Eliphaz is told that he and his friends have spoken folly. And then the sorrows of Job were turned to joy; he was restored to his former estate and again became wealthy and honored and blessed with children, and died old and full of days.

Upon the theory that the sufferings of Job were the result of a judgment, a theory which militates against the facts of the case, we are driven to the conclusion which is suggested in the speech of God, that this is one of the things which must remain incomprehensible. But what if the theory upon which the entire argument was based were an erroneous one? This, indeed, is the view of the author of the book, who has told us at the very outset, in the prologue in the Court of Heaven, that the sufferings of Job were not the result of a judgment, but were merely a trial of his righteousness. This is the

solution that the author of the book offers of the problem which beset Job and his friends, and which has puzzled all men in all times, namely, why do the upright and the righteous suffer, and the unrighteous prosper?

This solution is offered modestly. The author might have placed his view in the mouth of God and thus have given it a sanction above all other views expressed in the argument, but the author was no dogmatist, and hence did not presume to dictate the words of God. But by describing the trial in the Court of Heaven, wherein it appears that Job's misfortunes were not the result of his unrighteousness, but were merely a trial of his faith, he has sufficiently indicated his own view and he presents the case without attacking the agnosticism of Job, whose attitude he undoubtedly admires.

Job's case contains this important point among others, that although dogmatic theology freely asserts things about God, yet, no man can know whether they are true. Like Job, after listening to the concluding speech of God, the unprejudiced mind must

admit that these are things "which I understand not, things too wonderful for me which I knew not." A study of the case leads to the same conclusion as that expressed in the profound words of the high-minded agnostic who wrote the book of Ecclesiastes, "Be not rash with thy mouth and let not thine heart be hasty to utter anything before God; for God is in Heaven and thou upon earth, therefore let thy words be few."

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